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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 238.

EVERETT JOLLY, PLAINTIFF IN ERROR,

vs.

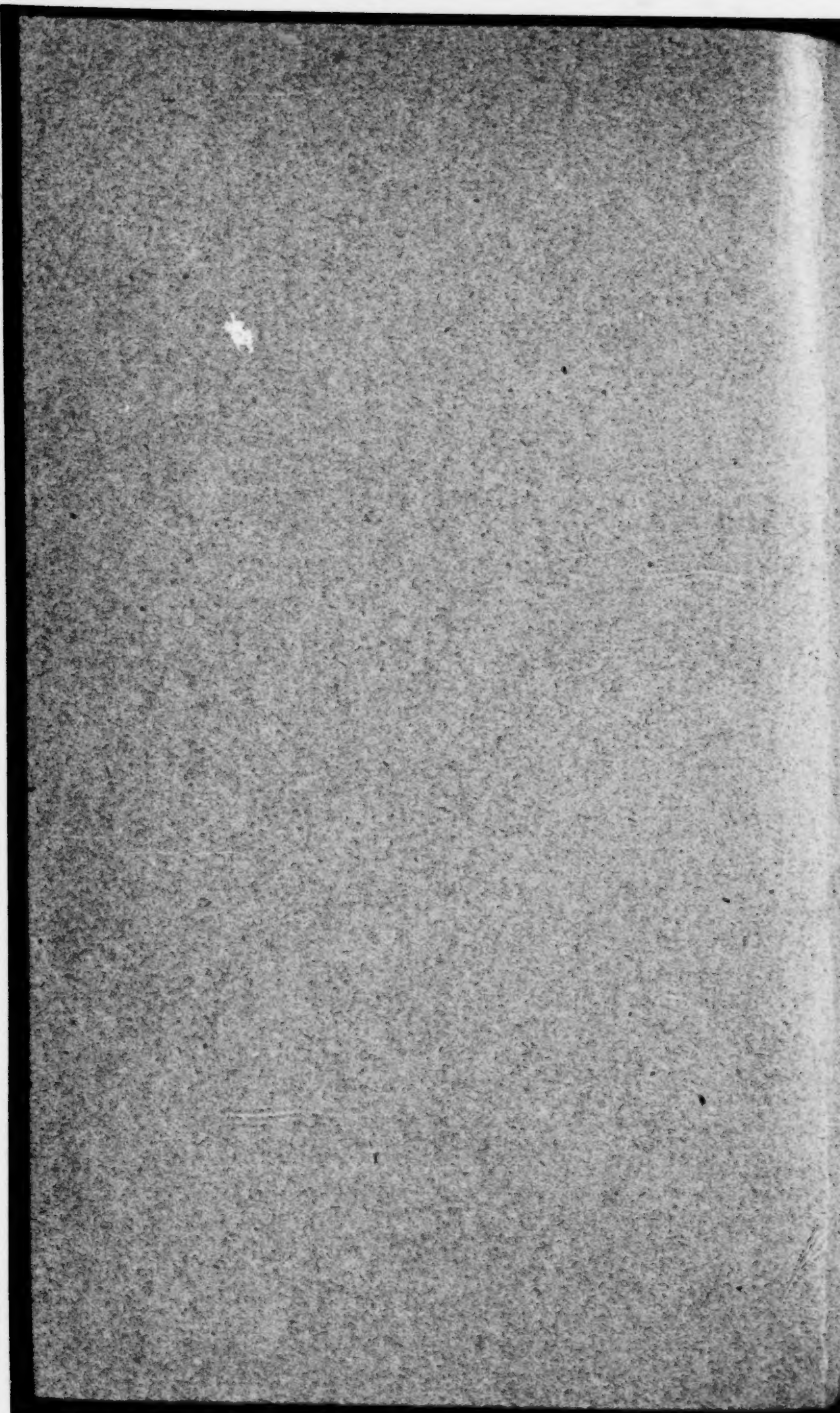
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KENTUCKY.

FILED SEPTEMBER 28, 1898.

(16,388.)

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(16,388.)

SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES.

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3 county of Breckinridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take, and carry away postage stamps of the United States of America amounting to and of the value of one hundred and sixty-three and $\frac{12}{100}$ dollars, lawful money of the United States of America, being of the denomination of 2,683 one-cent, 2,400 two-cent, 191 four-cent, 183 five-cent, & 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown; said stamps were then and there feloniously stolen, taken, and carried away by the said Everett Jolly from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the post-office at Hardinsburg, in Breckinridge county, State of Kentucky and district aforesaid, and as such postmaster then and there had said stamps in his possession when so taken, and the said stamps so stolen, taken, and carried away being then and there the personal property of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5456.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our
4 Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take, and carry away from a building then and there used as a post-office building of the United States of America, at Hardinsburg, in the county, State, and district aforesaid, postage stamps of the United States of America amounting to one hundred and sixty-three and $\frac{12}{100}$ dollars, said stamps being of the denomination of 2,683 one-cent, 2,400 two-cent, 191 four-cent, 183 five-cent, & 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown; which said stamps were then and there personal property of and belonging to the Post-office Department of the United States of America, and were then and there of the value of one hundred and sixty-three and $\frac{12}{100}$ dollars, lawful money of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5476.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our
5 Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take, and carry away postage stamps of the United States of America amounting to and of the value of one hundred and sixty-three and $\frac{12}{100}$ dollars, lawful money of the United States of America, being of the denominations of 2,683 one-cent stamps, 2,400 two-cent stamps, 191 four-cent stamps, 183 five-cent stamps, 670 ten-

cent stamps, 100 one-cent postage-due stamps, and 175 two-cent postage-due stamps, but a more particular description of the said stamps is to the grand jurors unknown; said stamps were then and there feloniously stolen, taken, and carried away by the said Everett Jolly from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the post-office at Hardinsburg, in Breckinridge county, State of Kentucky and district aforesaid, and as such postmaster then and there had said stamps in his possession when so stolen, taken, and carried away, and said stamps so taken, stolen, and carried away were then and there personal property of and belonging to the Post-office Department of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5475.

6 Fifth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there have and retain in his possession, with the intent to convert to his own use and gain, postage stamps of the United States of America, belonging to the United States of America, amounting to one hundred and sixty-three and $\frac{1}{10}$ dollars, said stamps being of the denominations of 2,683 one-cent stamps, 2,400 two-cent stamps, 191 four-cent stamps, 183 five-cent stamps, 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown, said stamps being then and there of the value of one hundred and sixty-three and $\frac{1}{10}$ dollars, lawful money of the United States of America, and which said stamps had been theretofore stolen from the United States of America by some other person to the grand jurors unknown, and the said Everett Jolly did then and there well know that the said stamps had been stolen
7 as aforesaid, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

Jur. Ed. Sup., p. 89.

W. M. SMITH,

United States Attorney, District of Kentucky.

Witnesses: W. J. Vickery, Thos. McClure, Louis McClure, M. Bullington, A. Board, J. B. Cox."

Said indictment bearing indorsements as follows:

"A true bill. J. W. Slaughter, foreman." Returned into court and filed June 4, 1895. Thos. Speed, clerk, by Ed. M. Bell, D. C.

And on the same day of said term, June 4, 1895, the following proceedings were had:

“ UNITED STATES }
 vs. } 193. Indictment.
 EVERETT JOLLY. }

This day came the district attorney; came also the defendant in proper person, having Chapeze Wathen, D. R. Murray, and Geo. W. Jolly, Esqrs., for his attorneys. The defendant moved the court for a continuance of this prosecution; which motion was over-
 8 ruled by the court; to which ruling defendant excepted.

Defendant filed a written motion and moved the court to quash the first, second, third, and fourth counts of the indictment herein, and also filed a demurrer to the first, second, third, fourth, and fifth counts of the indictment herein; which motion and demurrer are submitted to the court.”

Said motion to quash is as follows:

“ United States District Court for 6th Circuit & District of Kentucky.

UNITED STATES, Pl'ff, }
 vs. } Motion. No. 193.
 EVERETT JOLLY, Def't. }

The defendant, Everett Jolly, by counsel, moves the court to quash the 1, 2, 3, & 4 counts of the indictment No. 193 because said indictment was found and returned by the grand jury and filed in court while there was pending in this court an indictment found & returned by a former grand jury against him for same offense therein charged.

CHAPEZE WATHEN &
 DAVID R. MURRAY,
Att'ys- for Def't."

Said demurrer referred to is as follows:

“ In the District Court of the United States for the District of Kentucky, *set*:

UNITED STATES OF AMERICA }
 vs. }
 EVERETT JOLLY. }

The defendant demurs to the first, second, third, fourth, and fifth counts of the indictment, and to each one of said counts, because the facts charged in the said counts and each of them constitute no offense against the United States.
 9

CHAPEZE WATHEN,
 DAVID R. MURRAY,
Attorneys."

And on another day of said term, June 5, 1895, the following proceedings were had:

“ UNITED STATES }
 vs. } 193. Indictment.
 EVERETT JOLLY. }

This day came the district attorney ; came also the defendant in proper person and by attorneys, and, the court being sufficiently advised upon the demurrer to the indictment herein, it is adjudged that the said demurrer as to the third and fourth counts of the indictment herein be sustained, and it is adjudged by the court that the said demurrer as to the first, second, and fifth counts of the indictment be, and the same is hereby, overruled ; to which defendant excepts. The defendant filed an affidavit for a continuance of this prosecution and moved the court to grant such continuance ; to which motion the district attorney objected. The court being advised, it is adjudged that said objection be overruled, and it is ordered that this indictment be continued until the next term of this court,

10 and that defendant be permitted to enter into a recognizance in the sum of one thousand dollars, with surety in like sum, conditioned for his appearance in this court on the first day of the next January term thereof.”

Said affidavit for continuance referred to is as follows :

“ United States District Court for 6 Circuit & District of Kentucky.

THE UNITED STATES, *Plff.* }
 vs. } Affidavit.
 EVERETT JOLLY, Defendant. }

The defendant, Everett Jolly, says he is not ready for trial of this prosecution ; he says he came to this term of this court prepared to defend the indictment pending charging him with having stolen the stamps from the post-office building at Hardinsburg ; that on the 2 day of this term the grand jury returned the pending indictment containing the new charges of stealing said stamps from the possession of Thomas McClure and of having & retaining said stamps, knowing them to have been stolen from some person not named in the indictment ; he says that he was surprised by the return of said new indictment and the preferment of said additional charges ; that he

11 had no notification whatever of the intention of the Government to prefer said new charges and has had no opportunity to prepare to defend same ; that he is not guilty of either of said charges ; that the indictment fails to charge from whom he is alleged to have received them, and that to defend same he will be compelled to make inquiry and make proof of those with whom he was associated or in company with the whole time from the time of the alleged reception of said stamps ; that on the night that he is charged with having received same he was drunk and does not remember the happenings of that night, except now and then, and this in a disconnected way ; that by having time to do so he can secure witnesses and prove that he never saw or was with said Thomas McClure during that night & and that said Thomas McClure never had possession of said stamps on said night ; that he can

get witnesses and prove that one Louis McClure had possession of said stamps outside of and away from said post-office, late that night. He says said Louis was deputy postmaster, and he believes that he can get witnesses & prove that said Louis gave & put the stamps which defendant had into the possession of the defendant, and that said Louis was with the defendant and they were seen together frequently, and that said defendant and Louis became very

12 drunk and both became oblivious, and when morning came defendant had the satchel containing said stamps, and that only by reason of said deputy postmaster having put defendant in possession of them, & that the satchel was in the possession of one or the other at different times; he believes he can prove this. He says that he can, he believes, prove these facts by William Hardin & Lawrence Miller, who live in Breckinridge county, and believes that he can secure others to prove same facts; that said Louis & defendant were around the town together in different crowds and were seen by divers persons with whom they talked and were associated with. He says that, not being heretofore charged with the offenses charged as above set out, he made no special inquiry or effort to secure evidence thereon, and cannot now give even the names of those by whom he can prove said facts or with whom he was in company; but he knows he was with McClure (Louis), in company of divers persons resident of Hardinsburg, and he verily believes that he can, by having the opportunity, procure said evidence; that said evidence is true, and this affidavit is not made for delay merely, but that he may have a fair trial.

EVERETT JOLLY.

13 Subscribed & sworn to before me by Everett Jolly this 5 day of June, 1895.

ED. M. BELL,
U. S. Com'r."

And at a term of our district court held—Hon. Jno. W. Barr presiding—on the 7th day of February, 1896, the following proceedings were had:

" UNITED STATES }
vs. } 193. Indictment.
EVERETT JOLLY. }

This day came the district attorney: came also the defendant, by C. Wathen, D. R. Murray, and Geo. W. Jolly, and in proper person; defendant, by attorneys, moved for a continuance of this action and filed certain telegrams herein. The court being advised, the district attorney objecting thereto, it is adjudged by the court that said motion be overruled: to which def't excepted."

And at another day of said term, the 8th day of February, 1896, Hon. Jno. W. Barr presiding, the following proceedings were had:

UNITED STATES }
vs. } 193. Indictment.
 EVERETT JOLLY. }

This day came the district attorney ; came also the defendant in proper person, having C. Wathen, R. A. Miller, and Geo. Jolly, attorneys, and entered his plea of not guilty herein ; whereupon it is ordered that a jury do come ; thereupon came a jury, to wit,
 14 Thos. Kerriek, J. O. Milton, J. Will Hite, J. R. Mills, Geo. Cambun, J. B. Head, Jno. Finley, Geo. M. Wallace, W. P. Render, Sr., W. V. Davis, Alex. Gilliland, and Tab B. Young, who were elected, tried, and sworn well and truly to try and true deliverance to make between the United States and the prisoner at the bar. There not being time to complete the hearing of this cause, it is ordered that the jury be adjourned until Monday morning, 9 o'clock.

And on another day of said term, the 10th day of February, 1896, the following proceedings were had :

UNITED STATES }
vs. } 193.
 E. JOLLY. }

This day again came the parties, the district attorney, the defendant, in proper person and by his attorneys, and the jury empaneled in this case. The evidence being heard, the defendant, by attorneys, in the absence of the jury, moved the court to give the jury peremptory instructions on the first, second, and fifth counts of the indictment herein to find for the defendant ; to which motion the district attorney objected. The court being advised, it is adjudged that said motion be overruled ; to which defendant excepted. The jury, having heard the evidence, argument of counsel, and instructions of the court, retired to their room to consider of their verdict and returned into court the following verdict, to wit :

15 " We, the jury, find the defendant guilty as charged in the first and second count-.

J. B. HEAD, *Foreman.*"

And on the same day of said term, the 10 day of February, 1896, the following proceedings were had :

" UNITED STATES }
vs. } 193.
 EVERETT JOLLY. }

This day came the district attorney ; came also the defendants, by attorneys, and filed grounds and motion for new trial herein and motion to arrest the judgment herein. The argument of counsel being heard and the court being advised, it is ordered and adjudged that the motion for new trial herein be, and the same is hereby, overruled ; to which ruling of the court defendant excepted. It is

ordered that defendant be given thirty days in which to prepare and tender bill of exceptions herein.

And on the same day of said term the following proceedings were had :

UNITED STATES }
vs. } 193.
EVERETT JOLLY. }

It is ordered that the clerk of this court receive from W. J. Vickery, post-office inspector, the stamps in evidence in this case and place them in a vault for safe keeping.

16 And on the same day of said term the following proceedings were had :

"UNITED STATES }
vs. } 193. To Penitentiary.
EVERETT JOLLY. }

This day came again the district attorney. The prisoner was brought to the bar of the court in custody of the marshal; whereupon it was again demanded of him, the said Everett Jolly, whether he had anything to say why the court ought not, upon the premises and verdict of the jury, now proceed to pronounce judgment against him and order execution thereof according to law; to which he answered he had nothing which had not been before alleged, and nothing further was alleged. It is therefore considered by the court that the said Everett Jolly, for the crime of which he is charged in the first and second counts of the indictment, and of which he has been found guilty by the jury in their verdict herein, be imprisoned, confined, and kept at hard labor in the Indiana State penitentiary at Jeffersonville, Indiana, for the period of two years from the time he is delivered therein. It is ordered that the marshal do, without delay, convey him, the said Everett Jolly, to the said prison and there deliver him to the keeper, so that the sentence may be executed according to law."

17 The grounds and motion for new trial filed by defendant and referred to in order foregoing is in words and figures as follows:

In the District Court of the United States for the District of Kentucky, *set*:

THE UNITED STATES, Plaintiff, }
vs. } Motion and Grounds for New Trial.
EVERETT JOLLY, Defendant. }

The defendant comes and moves the court to grant to him a new trial herein and to set aside a verdict herein, and for grounds says:

1. The court erred to the prejudice of the defendant in not instructing the jury to find a verdict of not guilty for the defendant on each and every of the counts 1, 2, and 5 of the indictment.
2. The court erred to the prejudice of the defendant in permit-

ting to be read to the jury the letters written by the defendant and the letters written by others to him.

3. The verdict is against the law.

R. A. MILLER,
CHAPEZE WATHEN,
Att'ys for Def't.

18 March 10, 1896.—Assignment of errors filed, endorsed: "Filed March 10, 1896. Thos. Speed, clerk." Affidavit of defendant filed, endorsed: "Filed March 10, 1896. Thos. Speed, clerk." Petition for writ of error filed, endorsed: "Filed March 10, 1896. Thos. Speed, clerk." Petition for writ of error, endorsed: "Writ of error in the case herein mentioned is allowed, with supersedeas and stay of execution. Bail of the accused is fixed in the sum of \$5,000.00, with good security, this March 10th, 1896. Jno. W. Barr, judge." Bill of exceptions endorsed: "Filed March 10, 1896. Thos. Speed, clerk."

"To Ed. M. Bell, Esq., deputy clerk U. S. courts, Owensboro, Ky.:

This order is to be filed in the papers of the above-styled case.

JNO. W. BARR, *Judge.*"

DISTRICT OF KENTUCKY, ss:

UNITED STATES }
vs. }
EVERETT JOLLY. }

It is ordered that Everett Jolly, pending the writ of error herein, do find bail in the sum of \$5,000, with good security in the like sum. Thereupon the said Everett Jolly tendered his bond in the sum of \$5,000, conditioned according to law, with R. M. Jolly and W. J. Piggott as sureties, which bond is now approved.

19 It is further ordered that the said Everett Jolly be discharged *for* the custody of the marshal.

This March 23, 1896.

JNO. W. BARR,
District Judge.

The bond referred to is as follows:

District Court of the United States, District of Kentucky.

EVERETT JOLLY, Plff in Error, }
vs. }
UNITED STATES, Def't in Error. }

Know all men by these presents that we, Everett Jolly, principal, and R. M. Jolly and W. J. Piggott, as sureties, are held and firmly bound unto the United States of America in the sum of five thousand dollars, to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 10th day of March, A. D. 1896.

Whereas the above-named Everett Jolly hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered at January term, 1896, in the above-entitled
 20 prosecution by the district court of the United States for the district of Kentucky, at Owensboro, but on condition that the above Everett Jolly doth prosecute a writ of error to the Supreme Court of the United States, which he has heretofore sued out in this case, and that he shall abide the judgment of said Supreme Court thereon and the judgment of this court rendered hereunder; and, further, he (the said Everett Jolly) personally appear in this court and surrender himself to this court (district court of Kentucky, held at Owensboro), when or after the mandate of said Supreme Court is filed therein, then this bond and obligation is to be null and void; else to remain in full force and effect.

Witness our hands this 21 day of March, 1896.

EVERETT JOLLY.
 W. J. PIGGOTT.
 R. M. JOLLY.

Sealed and delivered in presence of—
 THOS. SPEED,

C. D. C., K. D.,

By ED. M. BELL, *D. C.*

Approved March 23, 1896.

JNO. W. BARR,

District Judge.

Justification of Surety.

UNITED STATES OF AMERICA, {
District of Kentucky. }

21 I, R. M. Jolly, one of the sureties in the annexed supersedeas bond of Everett Jolly, do solemnly swear that I am worth, over and above all debts, liabilities, and exemptions under the laws of Kentucky and subject to the levy of execution under the laws thereof, the sum of five thousand dollars.

R. M. JOLLY.

Subscribed and sworn to before me by R. M. Jolly this 21st day of March, 1896.

THOS. SPEED,

C. D. C., K. D.,

By ED. M. BELL, *D. C.*

Justification of Surety.

UNITED STATES OF AMERICA, {
District of Kentucky. }

I, W. J. Piggott, one of the sureties in the annexed supersedeas bond of Everett Jolly, do solemnly swear that I am worth, over and

above all debts, liabilities, and exemptions under the laws of Kentucky and subject to the levy of execution under the laws thereof, the sum of five thousand dollars.

W. J. PIGGOTT.

Subscribed and sworn to before me by W. J. Piggott this 21st day of March, 1896.

THOS. SPEED,
C. D. C., K. D.,

By ED. M. BELL, D. C.

Bond endorsed: "Filed March 23, 1896. Thos. Speed, cl'k, by Ed. M. Bell, D. C."

22 Bill of exceptions endorsed: "Filed March 10, 1896. Thos. Speed, cl'k."

Bill of Exceptions.

In the District Court of the United States for the District of Kentucky, *set*:

UNITED STATES }
vs.
EVERETT JOLLY. }

Be it remembered that on this the 8 day of Feb'y, 1896 (the same being a day of the January term of said court), came on to be tried the above-styled case.

The United States, to maintain the issues on its part, introduced and examined the following-named witnesses: Thos. McClure, Louis McClure, W. E. Vickery, and Moses Bullington.

THOMAS MCCLURE, being first duly sworn, testified as follows:

Examined by MR. SMITH, dist. attorney, for the plaintiff:

1. Mr. McClure, where do you reside?

A. I live in this county, sir.

2. Where did you live in 1894?

A. I lived at that time at Hardinsburg, Breckinridge Co., Kentucky.

3. Were you a Government officer in 1894?

A. I was postmaster at Hardinsburg in 1894.

4. When did you receive appointment as postmaster there?

23 A. Some time in '93. I don't recollect.

5. When did you cease to be postmaster?

A. In—I believe it was June 7th, '94, if I am not mistaken; something near that time.

6. Was there a United States post-office at that time in Hardinsburg?

A. Yes, sir.

7. And were you the postmaster of that office?

A. Yes, sir.

8. Was it a presidential office?

A. No, sir.

9. Mr. McClure, in April or at any other time during 1894 did you lose any stamps from that office?

A. Yes, sir.

10. When was it?

A. It was on the night of the 24th of April, '94, I lost some stamps, blank money orders, and postal notes.

11. Were you there upon that night?

A. I was not.

12. When did you leave upon that occasion?

A. I left after supper some time. I don't know exactly the time.

13. You were in the town on that night, then?

A. Yes, sir; I was at the hotel that night.

14. Were you at the post-office after supper?

A. I don't think that I was, more than to call in there and tell them where I was going.

24 15. At the time you left the post-office do you know whether or not there were stamps there at the time you left that day?

A. Yes, sir; there were stamps when I left the office.

16. How many stamps did you have on hand at that time?

A. I don't know, sir, exactly how many stamps I had on hand at that time; I could tell, I expect, by referring to papers.

17. That you have with you?

A. I think that I have.

18. Will you refer to them and tell me?

Mr. WATHEN, attorney for defense: Can't you remember it without that paper?

A. No, sir.

20. When did you make out that paper?

A. I made it the morning after the robbery.

21. Make it from your memory?

A. No, sir; I made it from my books.

22. Where are the books?

A. I made it from the books and accounts I kept in the office of the stamps sold and the stamps received, etc.

Mr. WATHEN: Well, we think the books the best record, then—the best evidence.

The COURT: What books?

25 A. They were just the cancellation books I kept in the office showing the date of stamps sold, which I had to refer to to see what was lost in the office; that was the only way I could tell that I know of.

24. Wasn't regular books, but memorandums, then?

A. I don't know; you might call them memorandums.

25. Where are the regular books you made and entry in?

A. I made an entry of stamps sold each day and stamps cancelled and stamps received, etc., and by that I could tell the amount of stamps I had on hand and the amount that was lost.

26. Have you any record at all of the amount you received?

A. Yes, sir.

27. Where is that record?

A. That record is in my papers at home from the department. I give receipts for all the stamps I receive from the department. They send me a blank to sign and one to keep and one to send back to them.

Mr. WATHEN: Do you keep that book yourself?

A. Yes, sir.

29. You make these entries on that book yourself that you speak about?

A. Most all the time. Sometimes I had others to make it; sometimes my boy made it and sometimes Amos Board made it, whichever one I told to make it.

26 The COURT: What is your best recollection about the amount of stamps on hand at that time?

A. At that time?

31. Yes; 24th of April, about.

A. Well, sir, I have no recollection of that at all. I have only got to go by my report at the end of the quarter—the last quarter before that—and show the stamps I received and the stamps I sold. That is the only way I have to come to that amount of the stamps I had on hand, the stamps I received from the Government, from my last report and the stamps I sold, and deducted them from the amount I received from the amount I had on hand at the end of the quarter. That is the only way I had to tell the amount that was lost.

32. Couldn't you give any idea at all to these gentlemen about how many stamps there was on hand?

A. I can do that, Judge, from the memorandum taken on the morning after the robbery, which I had other parties come in and help me to take the memorandum, take my receipts from the Government and take the stamps I had on hand at the end of the quarter and the amount I sold, and take that amount. This is the only way I had to find out what was gone. The money orders and postal notes, that was easy to find out how they were.

33. You got no memory about — at all? You don't know whether you had \$10 in stamps?

A. I know I had a large amount of stamps on hand. I kept a large amount all the time. I had to keep a good amount of stamps on hand.

Mr. SMITH: Did you have as much as \$100 worth of stamps at that time?

A. O, yes, sir.

35. Well, how much can you say you had on hand at that time?

A. Well, I can't say. I had three or four hundred dollars' worth.

36. You know you had as many as three or four hundred dollars' worth? What were the denominations of those stamps?

A. They were all denominations—50-ct. stamps and 10-cent stamps and most all kinds that are generally kept in a post-office of that kind.

37. You are the postmaster; tell the gentlemen the denominations.

A. 50-cent, 10-cent, periodical, and two-cent and one-cent stamps.

The COURT: What is a periodical stamp?

28 A. That is for newspapers.

Mr. SMITH: What is the denomination of that stamp?

A. I think they run from one to fifty cents, probably; I don't recollect.

40. Was there such a stamp as the "postage-due" stamp?

A. Yes, sir; I had them. I kept all the stamps that is generally kept in an office of that kind.

41. And you say that you saw these stamps on the day before you discovered the loss the next day?

A. Yes, sir.

42. Where were they at the time you saw them?

A. They were kept in a leather grip that I kept them in I brought from home, and as we used a sheet of them we tore it off and put in a drawer and took an account of the number we put in a drawer, and when they was gone we put another sheet in the drawer, and I hardly ever took them out of the grip, only as we tore off a sheet.

43. Where were they that day when you saw them?

A. They were in the grip, where I put them that morning.

44. What department?

A. Post-office Department.

29 45. That post-office was located where?

A. Well, I couldn't tell what street.

46. What town?

A. Hardinsburg, Breckinridge county, Ky.

47. Now, describe the building in which the post-office was kept.

A. It was a building about, I suppose, 40 feet by 15 or 20 feet. I don't know the measurement of the office; never measured it; merely guessing at it.

48. Where was the front entrance—I mean as to the points of the compass?

A. East.

49. On the west side of the street?

A. Yes, sir; on the west side of the street.

50. How many entrances were there to that building?

A. There was a front entrance and a back entrance, front door and back door.

51. How was it located with regard to the other buildings around there?

A. There was about a three-foot alley between it and the building on the right as you came out of the house—between the Widow Heston's property—about a three-foot alley, and it joins and was a part of the same building of Judge Barnes' office.

30 52. Was there any other business carried on in this room that you have described as 40 feet by—what was the other dimension you gave?

A. I suppose 12 ft. or 15 ft.

53. Was there any partition in that building, in that room?

A. No, sir; not in the main post-office; only there was a room in front, and then the office was this way, partitioned off (motioning with his hand). There was a front to the post-office, and behind that there was the main office. This was the front entrance, where the people came to the boxes.

54. Was that building, on either side of the partition, used for any other purpose than the post-office?

A. No, sir; there was not.

55. It was just a front entrance and private department to the rear of the post-office?

A. That was the way it was located.

56. Who was your assistant?

A. I had no deputies. I had my boy to help me some and Amos Board to help me some. They didn't help me long enough to make a deputy out of them. I didn't swear them in according to law.

57. When did you discover the loss of the stamps?

31 A. On the morning of the 25th of April, '94, early in the morning.

58. Have you any personal knowledge as to what became of those stamps?

A. I didn't at that time; that morning I didn't.

59. Did you afterwards gain any personal knowledge of it, not from what other people told you?

A. Yes, sir; I have an idea.

60. I don't want your idea. Did you lose your grip, too?

A. Yes, sir; the grip and stamps and blank postal notes and blank money orders. I kept that grip for this purpose. I put everything that was valuable in that grip, and would take it to my room at night, at home. Sometimes have right smart money and other times have none. Take it home and bring it back in the morning.

61. Carry your stamps home in that grip?

A. Carried the stamps home every night, with the exception of those stamps that were not daily used, such as periodicals; they were hardly ever called for, and I had them stored in the office; but the other stamps, that we had daily use for, I took home every night.

62. Can you say how many stamps you had in that grip on the day of the 24th or the day before the robbery and loss at night?

A. I can say from calculating, but I made out the amount.

32 63. Well, how many can you say from your recollection that you had in it?

A. From my recollection and from what I found to be lost, there were \$325.83 worth.

64. Where were they the last time you saw them?

A. They were setting on the desk inside the office—at one end of the desk.

65. What in?

A. In the grip.

66. Who did you leave in charge of the office the day of the 24th, the last time you were there on that evening?

A. I left Amos Board and my boy. Mr. White, from Hardin county, came to the office and wanted me to come to the hotel that night after supper and see him, and I went to the hotel after supper to see him.

Cross-examined by Mr. WATHEN:

67. How many kinds of stamps of each denomination did you have that you have spoken of there?

A. How many kinds of each?

68. Yes; the number and value of each.

A. I couldn't tell you, sir, without referring to my record that I made out; I could tell you then; of course, I couldn't recollect that.

69. What day of the week was this on that you lost these stamps?

A. I don't know that; I couldn't say.

33 70. Were you sober or drunk that night?

A. I was sober, I expect; I don't recollect that either.

71. You don't remember.

A. No, sir; I don't.

72. Had you been drinking any that day?

A. No, sir; I hadn't been drinking any that day; I don't recollect I had.

73. What kind of a grip was this?

A. It was a leather grip.

74. And the size of it and character of it?

A. Well, it was, I suppose, a foot or 18 inches long, and I never measured the grip; I never took any dimensions.

75. What was the color of it?

A. It was a yellow grip—brown grip; I expect you have seen me have it.

76. But I am asking for the benefit of the jury.

A. Pretty near everybody knew the grip in that country.

77. Did it have a strap on it?

A. Yes, sir.

78. To go over the shoulder?

A. Yes, sir.

79. Are you sure it was on the night of the 24th, Mr. McClure?

A. Yes, sir; I think so, to the best of my recollection.

80. I believe you stated that you do not remember the day of the week?

A. I do not.

34 81. When was the last time that day that you were at that post-office?

A. I was there off and on all day.

82. The last time?

A. After supper.

83. What time of the day or night was that?

A. It was the usual time people took supper along in April.

84. But the jury don't know.

A. I don't recollect what time I went to supper. I had my sup-

per and went in there after supper and told those boys where I was going.

85. Was it light or dark?

A. It was light, I think.

86. What did you go after?

A. Didn't go after anything particular at all; just went to tell them where I would be.

87. Did you keep the post-office open after supper? Did the law require you to do that?

A. Yes, sir. Well, I don't know whether it was the law, but it was customary.

88. When were your closing hours?

A. We had no particular closing hours; just the business hours of the town. When the business closed we closed.

89. When you left there you left, you say, to go to see Mr. White?

A. I went to the hotel to see Charlie White?

35 90. You left your son in charge?

A. I left him and Amos Board.

91. Louis McClure?

A. Yes, sir.

92. Was he drunk when you left?

A. *Was he drunk when you left?*

A. No, sir.

93. What time did you go home that night?

A. I went home between ten and eleven o'clock.

94. Was your son there?

A. My wife said he came in at half after ten.

95. Was he drunk?

A. I never seen him that night. I asked my wife if he was there and she said he was. She said he came in and got a bite to eat and went on to bed.

96. Never mind that. You didn't look to see whether the satchel was there or not?

A. I did not.

97. When did you find out it was gone?

A. Next morning.

98. Did you find it out before you went to the post-office?

A. No, sir; I went to the post-office before I found the satchel was gone.

99. Were you the first one at the office that morning?

A. Yes, sir; every morning.

100. Had your son got up when you left home?

36 A. No, sir; I opened up the office and he got up and came and relieved me—him and Amos Board—and then I would go and get my breakfast.

101. I understood you to say, in answer to question propounded you by Mr. Smith, that it was your universal custom to carry that satchel with you every night?

A. Every night when I went home.

102. I suppose it was your usual custom to carry it back every morning?

A. Yes, sir.

103. But you didn't miss it until you went to the post-office that morning?

A. No, sir.

104. Might not this have been on the night of the 25th of April?

A. It was the 24th.

105. You are positive about that?

A. That is the way I have it in my memory.

106. That is the best of your recollection?

A. Yes, sir; that is the best of my recollection—that it was the night of the 24th.

107. Now, Mr. McClure, when did you count the stamps in this grip the last time?

A. Well, I don't suppose I counted the stamps after I made my last quarterly report, sir; not after I made my report.

108. When had you made your report?

37 A. I don't recollect.

109. You don't remember?

A. No, sir.

110. And you had not counted the stamps that were in that grip since you has made your last quarterly report?

A. I suppose I had.

111. This report—quarterly report—is, of course, the report you made four times a year to the department at Washington?

A. I think so.

112. What time in the year do you generally make it? When do you make the first report?

A. The quarter begins the first of the year.

113. January?

A. Yes, sir.

114. Then I suppose your quarterly report was made the first of January of that year?

A. Yes, sir; I think—that is, the end of December. I don't recollect. I guess at the end of December or the first of January my quarterly report was made. I- has all passed my memory about what time.

115. That was the last time you counted the stamps in the grip?

A. I don't recollect of counting them after that.

116. Did you keep all these stamps in that satchel?

A. No, sir; I didn't keep all. I told you that a while ago.

117. Well, I just wanted to understand.

38 —. The stamps we didn't hardly ever use I laid them up in the desk.

118. They were your periodicals and your fifty-cent stamps?

A. Yes, sir; something of that kind.

119. Where did you keep them?

A. Kept them up in the desk.

120. How many did you have?

A. I couldn't tell to save my life.

121. To your best recollection?

A. I suppose we had probably \$100 worth; something along there. I could not tell without calculating.

122. Did you keep this desk locked?

A. No, sir.

123. Did you just stack them up in the pigeon-hole?

A. I kept them up there with some other papers in the pigeon-hole; yes.

124. Some other papers?

A. Yes, sir.

125. Were they stolen, too?

A. No, sir; they were there all right next morning.

126. Then you only had in your valise, I would take it, such stamps as you would have daily use for, such as one-cent and two-cents?

A. Yes, sir.

126. Now, do you mean to tell the jury you had \$300 worth of those stamps in that satchel?

A. Yes, sir; \$355.83, taking my books into account.

39 127. I believe there was some trouble between you and the Government about the way you kept your books?

(Plaintiff objects.)

A. No, sir; I don't know that the Government has interfered with my books or ever has had a word about my books. If you do, you are better posted than I am.

128. Does the Government admit that you kept everything accurately and correctly there?

(Plaintiff objects; which objection the court sustains.)

A. I have my receipts and papers to show.

129. I will ask you this question, Mr. McClure: Whether or not the accounts that you kept and that you have on hand correspond and agree with the accounts that the Government had?

(Plaintiff makes objection, which the court sustains.)

130. I will ask you this question: Has the Government charged you with being behind in your accounts at the post-office?

(Plaintiff objects.)

The COURT: Is that based on the accounts?

Mr. WATHEN: On accounts of stamps, I understand.

The COURT: You may ask him that question if you want to show interest. I thought you were talking about the accounts.

131. I will ask you if you have any interest in this prosecution?

A. I don't think I have. I have never taken any interest in it whatever.

40 Redirect examination by Mr. SMITH:

132. Mr. McClure, now without reference to the date you say that these stamps were lost, whether it was the 20th, 21, 22, 23, 24, or

any other day, on the day before they were lost did you see the stamps anywhere there?

A. Yes, sir; I did.

133. Where were they?

A. I taken them to the office that morning in my grip, and took out a part of them and put them in the drawer and fixed them for handling that day, and I took them out two or three times that day from the grip; would use a sheet and get another sheet.

134. Where did you leave them on the day before the night you lost them?

A. I kept them sitting on the corner of my desk.

135. In what?

A. In Hardinsburg.

136. Enclosed in what?

A. In that grip.

137. Who did those stamps belong to?

A. To me.

138. To you personally?

A. They belonged to me and the Government together. They belonged to me personally.

139. Aren't you mistaken about that?

(Defendant objects.)

A. They were my property—in my possession.

41 Defendant objects.

The COURT:

140. Explain to the gentlemen why they were yours.

A. Because they were in my control.

141. Who placed them in your control?

A. The Government did.

142. Who did they belong to?

A. I don't know; they were in my charge.

143. Did they belong to that post-office?

A. Yes.

(Objected to by defendant; which objection sustained.)

144. When did you have to pay for stamps; before they were sold or not?

A. I paid for them after they were sold.

145. How came you to get possession of them?

A. I made a requisition and the Government sent them to me.

146. For what purpose?

A. To use in the office for the accommodation of the people.

147. Now, you made these reports quarterly, commencing at the first of January?

A. Yes, sir.

148. When did you make your reports—for when?

A. I made my quarterly report in March, if I count right.

149. Close of March or first of April?

A. Latter end of March, if I count right.

Recross-examined by Mr. WATHEN :

150. Well, you gave bond to secure the Government for these stamps?

42 A. No, sir.

151. But the bond you gave as postmaster, didn't that secure the Government?

A. I don't know.

(Plaintiff objects.)

151. Did you give bond as postmaster?

A. Yes, sir.

LOUIS McCURE, being duly sworn, testified as follows :

Examined by Mr. SMITH :

1. Mr. McClure, in 1894 where did you live?

A. In Hardinsburg.

2. Are you the son of Thos. McClure?

A. Yes, sir.

3. What is your age?

A. Twenty-two years old the second day of last January.

4. In any time during the year 1894 were you assisting your father in the post-office department?

A. Yes, sir.

5. At any time during that year that you were assisting your father there, were there any stamps stolen?

A. Yes, sir; on the night of April 24th there were some stamps stolen.

6. Where did you see these stamps last before they were stolen?

A. Sitting under the table in the post-office.

7. In what department of the post-office?

43 A. In the front part of it.

8. Is that the delivery part of it, or in the office part of it?

A. In the delivery part of it.

9. That is where people come in to get their mail?

A. Yes, sir.

10. You saw that sitting under the table there?

A. Yes, sir.

11. What time was it that you saw that last?

A. About eight o'clock.

12. Night or day?

A. Night.

13. Who was at the post-office at that time?

A. Amos Board and two Mr. Bells that came after their mail about that time.

14. Did you leave the post-office at any time before you went home that night?

A. Well, I don't remember now whether I did or not before we closed up. I don't think I did.

24. Were you drinking?

A. Yes, sir.

25. How late did you stay at the post-office that night?

A. Till eight o'clock; that was the regular closing-up time.

26. Did you go back after you closed up?

A. Yes, sir.

27. How many times?

A. Twice.

44 28. Do you mean to say you didn't leave it until you closed up, and then you went back twice?

A. As well as I can remember, I didn't leave it until we closed up.

29. Did you take any stamps away with you?

A. I started to take them home. I started home when we closed up, and the two Bell boys came and wanted their mail, and Amos and I went back and got them the mail, and I set the stamps under the table.

30. What did you do then?

A. We went out, locked the door, and I went up town; don't know where he went then.

31. Did you go back any more?

A. Yes, sir.

32. Who went with you?

A. Everett Jolly.

33. Did you go in the post-office?

A. Yes, sir.

34. Well, what occurred after you got in there?

A. Well, he had a bottle, and he said my father told me to fill that up with brandy. I filled that up and we all came out.

35. Did you all drink there?

A. Not at that time, I don't think.

36. Did you come back any more?

A. Yes, sir.

37. Who came back with you next time?

45 A. Everett Jolly and Joe Ball.

38. What did you do then?

A. Well, they asked me something about giving them a drink of the brandy, and I took them in there and give them a drink, and I took a drink with them.

39. Where did you go then?

A. As well as I can remember, we came out and locked the door and sat down on the side of the doorway and sat there a while, and then I went home.

40. Did you notice whether the stamps were there the other times you went back?

A. No, sir; I never noticed.

41. After you sat them under the table?

A. I never noticed.

42. Did you carry the stamps away from there after you sat them under the table?

— — —

43. What were they in?

— The grip.

44. What kind of a grip—what color?

- A. Red, I think.
45. What do you mean by red?
- A. Well, the color of it—it was painted red on the outside.
46. Red or brown grip?
- A. It was red, what I would call it.
47. What size grip was it?
46. A. I suppose about 18 inches long.
48. What did this grip contain?
- A. Postage stamps; money order.
49. What dimension—what size?
- A. One cent, two cents—all dimensions we had in there, but I don't remember all of them.
50. Well, did you have any 5-cent stamps?
- A. Yes, sir; I think we had.
51. Any ten-cent?
- A. We had a few ten-cent stamps, I think; but I think they were special-delivery stamps?
52. Do you remember in round numbers how many were in that valise?
- A. No, sir; I do not.
53. Can you tell about how many dollars' worth were in there?
- A. No, sir; I don't know how many dollars' worth were in there. I didn't help count them in the next morning.
54. What size in bulk was the roll in there, counting them all? Indicate it with your hands, if you know.
- A. I don't know.
55. How near was the valise full?
- A. We had the grip pretty full, but we had some envelopes in there that we had the stamps in.
56. Tell me, now, how near full that valise was?
47. A. The grip was very near full, as many as you could get in it, I reckon. I could not say exactly how full it was; I don't remember.
57. Did you get pretty drunk that night?
- A. No, sir; I didn't get so drunk but what I knowed what I was doing all the time.
58. You were drinking, though?
- A. Yes, sir.
59. When did you commence drinking that night?
- A. Along about dark, I reckon.

Cross-examined by Mr. WATHEN:

60. I didn't exactly understand you to say—I don't know whether you did say or not what time you went home that night, Mr. McClure?

A. As well as I can remember, it was about half after eleven—close to eleven, as well as I can remember.

61. Was your father at home when you got there?

A. No, sir; I don't believe he was.

62. I understood you to say that about eight o'clock you and Amos Board were in the post-office?

A. Yes, sir.

63. And you started home?

A. Both of us started home.

64. Did you have this grip strapped across your shoulder then?

A. I had it round my neck.

65. And the Bell boys came after their mail?

48 A. Yes, sir.

65. Had you got out on the street when they came?

A. Yes, sir.

66. Had you locked the door?

A. I believe we had locked the door. I don't remember.

67. Was the post-office upstairs or downstairs?

A. Downstairs.

68. Did you say you had locked the door?

A. I don't remember whether we had locked the door or not. We were on the steps.

69. And the Bell boys came; and what were they named?

A. I don't know but one. I know his name was Taylor.

70. Have you seen them here?

A. Yes, sir.

71. Both here?

A. Both the boys; yes, sir.

72. When they came to get the mail did you go back into the post-office; did you give them the mail?

A. No, sir; I didn't give them the mail.

73. Did they get any?

A. Yes, sir.

74. Did you light a lamp?

A. Yes, sir; I think we lit a lamp in the back part. I think Amos lit it.

49 75. Did you go in the back part, too?

A. Me, sir? I stayed in the front.

76. The post-office was in the front of the building?

A. Where we delivered the mail was in the front part.

77. And you stayed there?

A. Yes, sir.

78. And you pulled the satchel off and put it under the table there. Were the Bell boys there then?

A. I think they were gone out then.

79. But you pulled the satchel off your shoulder while they were in the room and while the lamp was lit?

A. I don't remember.

80. You say Amos lit the lamp and A you had it on your shoulder then?

A. Yes, sir.

81. And they were in there then?

A. Yes, sir.

82. And you didn't pull it off your shoulder before they started to go?

A. I don't know. When they started to go out I said to Amos that I would set it under the table here.

83. If you didn't pull it off when they started to go out you pulled it off when they were in there?

A. Yes, sir.

50 84. Did you stand there with Amos when you were getting this grip strapped across your shoulder?

A. I don't know whether the Bell boys were in there or not—in the front part.

85. You were in the small room, then—that is, where the people wait to get their mail?

A. Yes, sir.

86. How large is that room?

A. I couldn't tell you.

87. In front of the boxes, how large is that room?

A. I couldn't say.

88. Your best idea, ten feet long?

A. No, sir; as well as I can remember, about ten feet wide and eight or ten feet long.

89. Now, you came out. Who locked the door?

A. Amos locked the door.

90. Did he have the key? And you had a key?

A. Yes, sir.

91. Then when did you go back?

92. I reckon it was a half hour or three-quarters of an hour before I went back.

93. Did you see the grip there then?

A. Yes, sir; it was sitting under there when I went back the first time.

94. What did you go back for?

A. I went back with Everett with that bottle to get it filled for my father.

95. Did you have a bar-room in there?

51 A. No, sir.

96. How were you going to get the bottle filled?

A. There was some brandy in there in a jug.

97. What did he keep it in there for?

(Plaintiff objects.)

The COURT: I suppose it is not material.

98. You went back?

A. Yes, sir.

99. And you and Everette went out again?

A. Yes, sir.

100. Well, how did you come to see the grip under there then? Did you look for it?

A. Yes, sir; I looked for it.

101. Did you examine it then?

A. No, sir; didn't pick it up.

102. You say you went back again?

A. Yes, sir.

103. Who went with you then?

A. Joe Ball and Everette Jolly.

104. What time of the night was that?

A. As well as I remember, it was close to ten o'clock. I don't know.

105. What did you go back for?

A. To get some brandy.

106. Who were you going to get it for that time?

A. Joe or Everette asked me something about getting them a drink, and I went down to get that.

52 107. Did you see the grip there then?

A. I never noticed.

108. Did you go right home then?

A. No, sir; we came out and sat down in front of the post-office, and sat there and talked a while, and then went home.

108. You didn't go back for the grip?

A. No, sir; I looked for the grip, and I said to Everette or Joe, one, I guess Amos took the grip home; he had a key.

109. Had Amos been in the habit of taking the grip home with him?

A. No, sir.

110. Had he ever taken it home with him?

A. Not that I know of.

111. You had been in the habit of carrying it home with you?

A. Yes, sir.

112. To your father's house?

A. Yes, sir; up to that time, whenever I went from the post-office home, I would take the grip, and sometimes my father would take it as he went.

113. Now, you say the grip was about as full of stamps as it would hold?

A. Well, the stamps and envelopes in there.

114. Was that where you always kept them?

A. We put them in there every night.

53 115. How long had you had these stamps?

A. I don't know.

116. When was the last time you got any from the department at Washington?

A. I could not say.

117. Your best recollection?

A. I haven't any recollection when was the last time we got any stamps from the Post-office Department at all.

118. Can't you give an idea?

A. No, sir; I don't know as I could.

119. And did I understand you to say—I don't want to misunderstand you—that you put these stamps in your grip every night when you started home?

A. Yes, sir.

120. And next morning you would take them out?

A. Yes, sir.

121. Who put them in that night?

I did.

122. What time?

A. About eight o'clock, when I was fixing to go home.

123. Had it been as much as a month when you got any from Washington?

A. I don't know whether it had or not.

124. Well, your best recollection?

A. I could not say whether it was or not.

54 125. Did you walk over town any that night—walk around town?

A. Yes, sir.

126. Where did you go?

A. To the barber shop.

127. Who kept the barber shop?

A. Crit Hamilton.

128. What time did you go there?

A. As soon as I closed up.

129. Well, after you and Everette Jolly went back to the post-office the first time, did you go around town any time then?

A. Yes, sir.

130. After that time?

A. Yes, sir.

131. About what time of the night was that then?

A. I suppose nine o'clock; somewhere along there.

132. Where did you go then?

A. I don't remember where we went; walked around town on the streets, I suppose.

132. Well, when you went back to the post-office again the last time after you went in there to get the liquor where did you go then?

A. Came out on the street in front of the post-office and sat down there and talked awhile, and after a while I got up and said I believed I would go home, and I looked for the grip and said, I guess Amos took it with him.

55 133. I understood you to say you had been drinking right smart that night?

A. Yes, sir.

134. Where did you get that liquor?

A. Out of that jug.

135. Were the Bell boys there then?

A. Yes, sir.

136. Were you drinking much then?

A. I drank as much as I did any time that night.

137. You knew what you were doing all the time?

A. Yes, sir.

138. When you went out in town after you had that bottle filled that Everette told you he wanted it filled for your father, did he drink that bottle up?

A. I don't know what he done with it; he left me, and I never seen the bottle any more.

139. How did you get together again?

A. As well as I remember, I met him in the court-house yard.

140. With reference to this table that you had the stamps under, where was this liquor in that room with reference to that table?

A. It was back in the back part of the office.

141. There were two rooms there, were there—front and back room?

A. The way we had the boxes fixed in the post-office.

142. Just the boxes made a partition there; that's all?

56 A. Yes, sir.

143. So this liquor was behind these boxes?

A. Yes, sir; it was right smart piece behind those boxes.

144. And you went in there to get Everette a drink?

A. Everette and Joe Ball.

145. Did they drink out of the jug of liquor?

A. I don't remember, but I believe they did.

146. Do you know Hop Pyles up there?

A. Yes, sir.

147. Keep a little store there?

A. Yes, sir.

148. Were you in there that night?

A. Yes, sir; I was in there.

149. About what time?

A. I don't know what time I was in there.

150. Your best recollection?

A. My best recollection, directly after I closed up and went round to the barber shop.

151. Have this satchel with you then?

A. No, sir.

152. Did Joe Ball keep a little store there at that time?

A. Yes, sir.

153. Were you in his store that night?

A. Yes, sir.

154. What time of the night were you in there that night?

A. I suppose close to ten o'clock.

155. Have the satchel with you then?

57 A. No, sir.

156. Were you in the court-house yard that night?

A. Yes, sir.

157. Who was out there when you were?

A. Bill Hardin and Everette.

158. Have the satchel with you then?

A. No, sir.

159. Was Everette drunk that night?

A. I couldn't say he was drunk; he was drinking.

160. Were you down at the Hamilton house, the old brick hotel, where there was some music going on? I believe Mr. Murray was playing the violin.

A. I might have been there.

161. Wasn't you in the door?

A. Seems to me I was standing in the door once.

162. What time of the night was that?

A. I don't remember.

163. Was Everette with you?

A. As well as I remember, Everette wasn't with me then.

164. Was Everette in the house then?

A. I don't remember whether he was in the house then or not.

165. Did you have the satchel with you then?

A. No, sir.

166. Then you never had the satchel after you locked up the first time, when the Bell boys were there?

A. After I set it under the table, I didn't have it any more that night.

58 167. I understand you to say that when you locked up at that time that was your usual hour for locking up every evening?

A. Yes, sir.

168. Who did most of this locking up and carrying that satchel home?

A. I suppose I did most of it.

169. Who brought it down in the morning to the post-office?

A. First one of us and then the other. Sometimes I would bring it down and sometimes my father, whichever one went up there *up there* first.

170. You don't remember what time of the night you were at the hotel?

A. No, sir.

171. Where were you when Everette Jolly and Joe Ball caught up with you again?

A. We were where Joe Ball was keeping that little store when both were with me.

172. What were you doing in there?

A. I was in there talking to Joe.

173. How did you come to go in there?

A. I was passing along by there and I stopped, I reckon. I don't know how.

174. As I understand you, you would not have gone back to that office at night that time if Everette and Joe Ball had not got you to go back and get that liquor?

59 A. I don't know that I would until I got ready to go back to get the stamps.

175. What time would you have gotten ready to get the stamps?

A. I don't know what time I would have gotten ready.

176. When you were at Hop Pyles' that night, what did you do?

A. As well as I can remember, I got some bananas or something that way, and eat them while I was in there.

177. Did anybody eat them with you—did you give anybody some bananas?

A. I don't remember whether I did — not.

178. Do you know Herbert Beard?

A. Yes, sir.

179. Did you invite him to eat some bananas with you?

A. I don't know.

180. You may and you may not have done that; you don't remember?

A. Yes, sir.

181. Now, Mr. McClure, when you were at Joe Ball's, did you eat anything there?

A. Yes, sir; I believe I did eat something there. I don't remember what it was.

182. Oysters?

A. As well as I remember, I eat some oysters.

183. Who paid for them?

60 A. I don't know; I believe I paid for them.

184. How long did you stay in Joe Ball's there?

A. We stayed there right smart while. I don't remember how long.

185. Who was with you?

A. Everette and Joe Ball were in there.

186. You stayed there talking?

A. Yes, sir.

187. Who went in Joe Ball's with you?

A. I don't remember whether I went in by myself or whether somebody went in with me.

188. What time was that?

A. That was about ten o'clock, I believe; somewhere along there.

189. Was Everette in there when you got in there?

A. I don't remember whether he was in there or whether he come while I was in there.

190. You stayed there and talked some time?

A. Yes, sir.

191. When you left Joe Ball's to go down to the post-office to get the liquor, who proposed that you go and get it?

A. Joe or Everette. I am not certain which one it was.

192. You are right certain you didn't do it?

A. I don't think I did.

193. To refresh your memory, didn't you propose to take a tin cup and get it in that tin cup?

A. I don't remember whether I did or not.

61 194. You won't say that is not true, will you?

A. I won't say it, because I don't remember whether I proposed it or not.

195. You were not so drunk that night that you didn't know what you were doing?

A. No, sir; I thought I knew what I was doing all the time.

196. Is your memory clear on all those subjects I have been asking you about?

A. Yes, sir.

197. I will ask you after you went from Joe Ball's and went down there and got a drink, if you didn't go back to Joe Ball's?

A. No, sir.

198. Didn't you, after that time, go back there and propose to Everette that you take a game of cards?

A. No, sir.

199. Did you play a game?

A. No, sir.

200. Did he propose to take a game?

A. Not as I remember.

201. Did you see Mr. Board any more that night after you closed the office?

A. I don't remember whether I saw him any more or not.

Redirect examination by Mr. SMITH :

202. Now, how many times after you went back with the Bell boys at the time you say you left that valise in there, how many more times that night did you go back in that office?

A. I went there twice besides the time I went to get the mail for the Bell boys.

Mr. W. J. VICKERY, being duly sworn, testifies as follows :

1. Do you hold any official position under the Government of the United States?

A. Yes, sir; I am post-office inspector.

2. As such inspector, what are your duties?

A. The duties are varied. Among other things, I am required to investigate post-office robberies, adjust claims, report on their claims, and, when possible, to trace down and cause the arrest of those who rob the offices or offend in any way.

3. In 1894 did you occupy that position?

A. Yes, sir; I have been inspector continuously since '89.

4. Is there a U. S. post-office at Hardinsburg, Breckinridge county, Ky.?

A. Yes, sir.

5. In '94 who was postmaster?

A. In 1894 Thos. F. McClure was postmaster. He entered on June 7th, as I recollect now, of '94.

6. Did you investigate that post-office and any robbery said to have occurred there?

63 A. On June 7th I was called to investigate that post-office robbery. The postmaster had reported a robbery to the department, and I went to investigate that and also to look over the money-order books of that office in addition.

7. Did you find any stamps there, Mr. Vickery, or shortage of any stamps?

A. At that time, yes, the account showed a shortage of stamps.

(Defense objects.)

The COURT: Let him produce the account.

Mr. SMITH :

8. Have you got the accounts?

A. I have not. If I may state—that I made no discoveries; merely made inquiries in regard to the robbery the first time I was there.

I merely inquired of parties familiar with the events. I again visited Hardinsburg on the 20th day, now, as I recollect it. It may be—I will see if that was June or July if you will pardon me just a moment (looking at papers). On the 7th day of June I was there. (This is my diary, made at that time.) I visited that office again on the 8th day of August, again making inquiries in regard to this same robbery. On the 27th day of August I visited Hardinsburg, and at this time I had the defendant, Everette Jolly, called over to the post-office and talked with him in regard to this robbery. He came to the rear room of the post-office. I had known him personally before.

64 I spoke to him of the fact of my investigating the robbery and of never having spoken to him about it before, and that I must see him, because I understood he was with McClure that night. I—I asked him if he was drinking. He said both of them were; that he was drunk, and that young McClure was drunk. I asked him if McClure was in the habit of getting drunk, and he said he was not in the habit of getting drunk. The talk now was very general for some time. I talked with Jolly on different branches, different points, and I asked him first in regard to young McClure being drunk that night, and if he, Jolly, was drunk, and he said both were drunk; and I said, Everette, do you remember anything about that grip? and he said, I have no recollection of the grip. I said, Everette, you didn't see McClure with it? and he said, No; he didn't see McClure with it. I asked him if he supposed young McClure would steal those stamps? and he said, "No;" as far as he knew, young McClure was an honest boy, and he didn't know anything against him, except he had been drunk with him this night. I said, Do you suppose Amos Board took those stamps? and he said, No; he thought Amos was perfectly honest. I said,

65 You run with Amos and young McClure a good deal, don't you? He said, "Yes, sir." I said, "If McClure had had any great number of stamps he would have probably shown them to you, wouldn't he?" He said, Yes, sir. And if Amos had had the stamps you would probably know it? He said, Yes, sir. I said, "Have you seen either of these young men with any of these missing stamps?" He said, I have not. I then said, "Everette, have you had any of these stamps?" He laughed and said, "No." I then withdrew from my pocket these three letters and showed them to Everette, and pulled out a package of stamps from each one like that, and said to him, "Now, Everette, there is your writing and there are the stamps. What did you do with that grip?" and he said, I burned it.

Cross-examined by Mr. WATHEN:

9. Did he know at that time that you were an officer?

A. He did; had known it for some time.

10. What was your purpose in asking him all those questions?

A. Because I wanted to get the rest of those stamps and the truth from Everette Jolly.

11. Wasn't it your purpose to extort a confession from him?

66 A. There was no extortion ; I wanted to get the truth.

12. Wasn't it your purpose to get a confession out of him if you could ?

A. Yes, sir ; but there was no threat and no promise.

13. Didn't you have a warrant with you for him then ?

A. Yes, sir ; but the officer wasn't with me ; he was in town ; he came to town in the same train with me, but wasn't in sight at that time.

(Plaintiff objects to the evidence as incompetent.)

14. Did you tell him up to that time you were his friend, in that conversation—the friend of Everett Jolly ?

A. I had a talk with him about playing base ball, and I told him I was a friend of Geo. Jolly's and I felt very deeply for him after he had confessed.

(Defendant objects to this evidence about confession. The court overrules said objection ; to which the defendant excepts.)

I asked Everett that he did with the grip, and he said, "I burned it." I asked him what he did with the money-order blanks that were in the grip, and he said he had burned them. Then I asked with regard to the stamps—I don't know ; I think I counted

67 them—and I said, "Have you any left?" He said, "Yes."

How many? He said, "Seven or eight dollars' worth." I said, "Are they in your room?" "Yes, sir." "In your trunk?" "Yes, sir." I said, "How many of these have you used ; you have bought other merchandise?" He said, "I don't know exactly."

I expressed some surprise at his taking the stamps. He said, "I am glad of an opportunity to tell somebody ; I am not sorry for myself, but I have worried and grieved because my mother is sick, and it will kill her." I said, "We will go and get the stamps." We went to his room and he produced the bundle of letters and said, "This correspondence I have relates to the stamps I have sent off," and he turned over this package of letters from the different firms relating to the merchandise. We then counted up, and he said, "I have about \$30 that I haven't sent away." I asked him if he thought \$30 would cover what he had used. "No," he said, \$40 would cover it. We talked for some time in the back part of the post-office. I asked him where he got this grip—whether he got it on the street or from the building. He said, "I took it out from the front part of the

post-office ; it was left in the front part, just by the door, and
68 we went back several times for liquor, and one of those times young McClure went in the office, and while he was there I picked up the grip and threw it between the post-office room and the room next to it, and I left it there until McClure got away from me." That night—he fixed the time about midnight ; he said he was too drunk to remember distinctly, but he thought it was about that time—and he then took the grip and went home. He said he had put it in the court-house behind the door, hoping somebody would come and get it, because he was afraid to keep it ; but they didn't get it. I asked him, "Why, after all that fear, why didn't you turn

them over or leave them where McClure would have gotten them, because McClure was partially under suspicion for this robbery?" He said "he had probably sent out about \$40 worth of stamps to pay for merchandise." I then left the office with him, and we walked along the street and met Mr. Bullington, who had a warrant in his pocket for Jolly's arrest, and I introduced Mr. Bullington simply as Mr. Bullington, not as an officer. We went on to his home and walked through the front hall—I think some of the family could see us as we went upstairs—and then Everette turned to the
 69 trunk and produced from the trunk the stamps (this outside wrapper I got at the post-office). My recollection is he furnished the inside wrappers we have here. The stamps were counted in that room in Bullington's presence, and while we were there counting them Mr. Pickard came in. This roll was turned over to me. Here are the ones and twos: here are some higher denominations, tens and fives, and there are the postage-due stamps, and here are some odds and ends (showing the stamps mentioned to the court). We counted the stamps up at that time. I think Mr. Bullington made a memorandum of them himself. I took down the amounts. My first memorandum was made on an envelope, which I think I have here in the rough. This envelope has since accidentally been blotted. My inkstand broke open in the grip. I made off a table of that and the list he turned over to me.

Reading from memorandum: From Hardinsburg, 27th day of August.

2,400 two-cent stamps, value.....	\$48 00
2,683 one- " " "	26 83
670 ten- " " "	67
183 five- " " "	9 15
191 four- " " "	7 64
100 one-ct. postage-due, value.....	1 00
70 175 two-ct. postage-due	3 50
Total, as I have it here.....	163 12

Now, Mr. Jolly admitted at the time he had written and mailed each of these letters, enclosing stamps, one of them to Mott & Baker, St. Louis, and he made the memorandum on the outside, stamps, \$4.75; another to A. G. Spaulding & Bro., 149 Wabash Ave., stamps, \$3.10, and one to Bendle & Adams, 98 William St., New York, stamps, \$2.20. I showed him also at that time some other letters returned by some of these same firms to whom he had enclosed previous orders with stamps, and he identified them as having been sent. Here is a previous order to A. G. Spaulding & Bro.: Enclosed find \$2.75 in stamps, and a previous order to Mott & Baker, enclosing postage stamps, \$4.55. My recollection is I had still another, but I haven't it in the package; but those were shown him, and he said he had sent the stamps, and then with these letters we set down and made a list with these expenditures of stamps with these stamps I have in here, making a total of \$10.05 from the letters that were

in that pile of correspondence. We gathered expenditures of \$12.60 more, and then Mr. Jolly himself suggested other expenditures, because, he said, he wanted to tell the whole thing, so that he might be put as far right as possible after worrying along.

He suggested an amount of \$4.61, making a total, with the \$16.00 recovered, of \$41.31 of the stamps that had been used that were not in these bulky packages that he turned over.

MR. SMITH: I desire now to offer these three letters, with the stamps and the others that he acknowledged to have written, enclosing order of stamps, and these that he gave up at that time relating to the stamps that he had sent off.

THE COURT: I understand you to say, Mr. Vickery, that he admitted that these were the letters he had sent off?

A. Yes, sir; I showed the envelopes with his return card and writing on, and he said he had sent these and the others that had been returned by these firms, and then he said the other expenditures could be gathered from the correspondence he had received through the mail with the packages he had sent; said these were all the letters he had sent.

MR. SMITH:

15. I understand, Mr. Vickery, that that package contains letters that he received from other people?

72 A. Yes, sir.

MR. WATHEN: You want to introduce them?

MR. SMITH: Yes, sir; they are receipts and bills.

(Defense objects to the introduction of these particular letters as being incompetent evidence.)

THE COURT: They may not be competent on this issue. I merely decided that the letters he handed over as to stamps he had issued.

MR. SMITH: The letters, so the witness says, are letters for the receipted bills that Mr. Jolly said he had paid off in stamps, and he gave the bills in order to ascertain the amount of stamps he had disposed of.

The court allowing following letters to be read to the jury (to which the defendant excepted), the district attorney then read the following letters to the jury:

HARDINSBURG, KY., Aug. 9, 1894.

Messrs. Mott & Baker, St. Louis, Mo.

GENTLEMEN: Received your letter and shoes in due time and am pleased with the shoes. You have me charged with 40c. express chgs. prepaid. Waybill for same was 25c. chgs. prp., making you owing me 5c. Please note order and \$4.75 in stamps, 25c. ex. chgs. Please send as soon as you can and oblige,

Yours truly,

EVERETT JOLLY.

Envelope.

"If not delivered in 10 days return to
E. Jolly, Hardinsburg, Ky.

MOTT & BAKER,
610 N. Broadway, St. Louis, Mo."

73 HARDINSBURG, KY., Aug. 19, 1894.

A. G. Spalding & Bro., Chicago, Ills.

GENTLEMEN: The ball I received from you did not last 6 innings. Will try one more. Enclosed please find \$3.10, for which please send me the following:

1 League ball.....	\$1 25
1 leather belt, No. D, 159.....	1 25
1 umpire indicator.....	50
No. 11 Football Guide.....	10
Am't enclosed.....	3 10

My waist measures 33 inches for belt. Please send as soon as you can. Have you catalogue of fishing tackle, &c., &c.? If so, will you please mail it to me and oblige,

Yours truly,

EVERETT JOLLY.

Envelope.

"If not delivered in 10 days return to
E. Jolly, Hardinsburg, Ky.

A. G. SPALDING & BRO.,
149, 151 Wabash Ave., Chicago, Ills.

I saw the cashier of Spalding & Co. open this letter and take from — \$3.10 in postage stamps—77 4c. stamps & 2 1c. stamps. Aug. 22, '94. W. S. Mayer, P. O. insp."

HARDINSBURG, KY., Aug. 10, 1894.

Beadle & Adams, New York, N. Y.

GENTLEMEN: Enclosed please find \$2.20, for which please send me 20 of Deadwood Dick's novels, ½ dime library, beginning with No. 1, 20, 28, 35, 42, 49, 57, 73, 77, 100, 104, 109, 129, 138,

149, 156, 195, 201, 205, 217, amounting to.....	\$1 00
74 Also 10 of Buffalo Bill's novels, beginning with No.	
52, 83, 92, 168, 175, 189, 243, 304, 319, 329; am't...	1 00
Postage.....	20

Am't enclosed..... 2 20

If this isn't enough postage, let me know, and I will remit necessary amount. Please send immediately and oblige,

Yours truly,

EVERETT JOLLY.

Envelope.

"If not delivered in 10 days return to
E. Jolly, Hardinsburg, Ky.

BEADLE & ADAMS,
98 Williams St., New York, N. Y."

HARDINBURG, KY., July 29, 1894.

Mott & Baker, St. Louis, Mo.

GENTLEMEN: In looking over B. Nugent's catalogue, I noticed your advertisement of shoes, and as Nugent has given perfect satisfaction in all I have ordered from them, I will give you a small order. Please send me your Surprise No. 4, "Home" men's

calf shoe, size 7½, board toe, laced.....	\$3 50
Infants' button shoe, cut B, dongola kid, hand made, size	
No. 4.....	75
Postage or expressage.....	30

Am't enclosed..... 4 55

Please send immediately and oblige,

Yours truly,

EVERETT JOLLY.

E. Jolly, Hardinsburg, Ky.

"HARDINBURG, KY., Aug. 13, 1894.

H. G. Spalding & Bro., Chicago, Ills.

GENTLEMEN: Enclosed find \$2.75 in stamps, for which
75 please send me 1 pr. black wool stockings, size 10½, extra
long; also 1 League ball. The balls we get here are very
poor; the cover seems to be rotten and does not last through half
of a game. Please see if you can send me one that will last 9
innings anyhow, and oblige,

Yours truly,

EVERETT JOLLY.

P. S.—Please send me your catalogue."

"Bloomington Bros., importers & retailers, Third avenue, 59th &
60th Sts., H. # 2269.

Dictated by —.

NEW YORK, July 21st, 1894.

Mr. E. Jolly, Hardinsburg, Ky.

DEAR SIR: Replying to your letter of the 16th inst., we beg to state that the amount enclosed with your order was only \$1.09, instead of \$2.09, as mentioned. We send you hose for 87 cts., including postage, and retained the shirts, which we shall be pleased to forward upon receipt of the difference of \$1.20, with postage. The balance of 22 cts. is placed to your credit. Hoping to be favored with an early reply, we are,

Yours respectfully,

BLOOMINGDALE BROS."

Envelope.

"Bloomington's, Third Ave., New York.

MR. EVERETT JOLLY,
Hardinsburg, Ky., Breckinridge Co., Box 26."

"HART HARDWARE COMPANY,
LOUISVILLE, KY., June 22nd, 1894.

Mr. Everett Jolly, Hardinsburg, Ky.

DEAR SIR: We have your order of the 21st and have today
76 sent you by mail one No. 66 Stanley patent hand reader.
When the package comes to hand you will see we were com-
pelled to pay 23 instead of 15c. postage. Please send us the differ-
ence we had to pay. Thanking you for the order, we remain,
Yours truly, HART HARDWARE CO."

Envelope.

"Hart Hardware Co., Louisville, Ky.

MR. EVERETT JOLLY,
Hardinsburg, Ky."

"HART HARDWARE COMPANY,
LOUISVILLE, KY., July 28, 1894.

Mr. E. Jolly, Hardinsburg, Ky.

DEAR SIR: We are sorry to have your complaint of the 26th inst.
in regard to the plumb & level sent you by express, but this is the
only way this could have been sent, as the goods would have been
damaged had they been sent by mail, and we have no doubt the
charge would have been more. We ordered this from the factory,
as we could not get it here, and the only way we could get it to you
was the way we sent it. We have sent your letter to the factory,
and do not think the plumb tube will be heavy, and possibly we
can furnish you this without charge. We will see what we can do
for you and are sorry to have your complaint.

Respectfully, HART HARDWARE CO."

Envelope.

Hart Hardware Co., Louisville, Ky.

MR. E. JOLLY,
Hardinsburg, Ky.

77 Established 1872.

KELSEY PRESS COMPANY,
MERIDEN, CONN., Aug. 18, 1894.

Mr. E. Jolly.

DEAR SIR: Your favor in our hands. We will accept stamps in
payment to any amount you choose to buy of us.

Very truly, KELSEY PRINTING CO.

Envelope.

'Kelsey Press Company, Meriden, Connecticut.

EVERETT JOLLY,
Hardinsburg, Ky."

Chas. E. Bucher.

LOUISVILLE, KY., *July 10, 1894.*

Mr. Everett Jolly, Hardinsburg, Ky.

DEAR SIR: Your favor of 9th inst. to hand; contents noted. We can furnish you a box of dates, with holder, at 75c. or we can give you a hand dater at \$1.00 & \$1.25. We can furnish you rubber stamps at 15c. p'r line or 30c. for 2 stamps, one with your name on and the other If not delivered within 10 days return to. Kindly awaiting your favor, I remain,

Respectfully,

CHAS. E. BUCHER.
W.

Bill.

LOUISVILLE, KY., *July 14, 1894.*

E. Jolly bought of Chas. E. Bucher, rubber stamps, seals, and stencils, steel dies, brass checks, burning brands; telephone, 2157; 236 Third street, near Market; designer and engraver on jewelry, silverware, &c.; card plates, society emblems, gold and silver badges; wood engraving.

3 stamps.....	45
1 box dates	75
	<hr/>
	1 20

Paid.

CHAS. E. BUCHER.

Envelope.

Chas. E. Bucher, Louisville, Ky.

MR. EVERETT JOLLY.

Hardinsburg, Ky.

78

NEW YORK, N. Y., *June 1, 1894.*

Mr. Everett Jolly bought of L. E. Waterman — Co., No. —, Waterman's Ideal fountain pen; sent by reg. mail; terms, cash; No. 157 Broadway.

In accepting the pens covered by this invoice, it is understood that you are not to sell them for less than the retail price fixed by this company:

1 No. 2 Ideal pen	3 00
1 pocket.....	40
1 " filler.....	28
	<hr/>
	3 68

Rec'd paym't,

L. E. WATERMAN,
Per A. J. CANDA, *Sec'y.*

Envelope.

L. E. Waterman & Co.,
No. 157 Broadway, New York, N. Y.

Mr. EVERETT JOLLY,
Hardinsburg, Kentucky.

"ST. LOUIS, 7, 11, 1894.

Mr. E. Jolly, Hardinsburg, Ky., bought of B. Nugent & Bro., dry goods, notions, etc., Broadway, Washington Ave., and St. Charles St.; terms, strictly cash (we do not charge goods to any one).

	DR.	CR.
Cash received.....	...	3 70
Mdse. shipped.....	...	
2 pr. drawers, 15.....	1	50
2 shirts, 45.....		90
3 pr. hose.....	1	00
Express.....		25
	—	3 65
Refunded.....		5

B. NUGENT & BRO.
F.

Out of = 550 drawers, so send better at same price."

79

Envelope.

B. Nugent & Bro., Broadway, Washington Ave.,
and St. Charles St., St. Louis, Mo.

EVERETT JOLLY,
Hardinsburg, Ky.

"Waterman's Ideal fountain pen. L. E. Waterman & Co., 157
Broadway.

NEW YORK, N. Y., *June 27th, 1894.*

Mr. Everett Jolly, Hardinsburg, Ky.

DEAR SIR: We have yours of the 23rd with stamps for \$2.50, which, with the \$0.50 due on the other transaction, pays for the \$3.00 pen sent you by registered mail. We intended to have returned you the 50c. at that time, and trust you will pardon the oversight. The fact that we sent you a pen with a \$2.50 label on it shows that we were not intending to take any advantage of you, and we trust you will excuse the mistake, which we now cheerfully correct.

Thanking you for your kind interest in our pen and hoping we may have further orders, we remain,

Yours truly,

L. E. WATERMAN."

Envelope.

L. E. Waterman & Co.,
No. 157 Broadway, N. Y., N. Y.

MR. EVERETT JOLLY,

Hardinsburg, Ky.

"NEW YORK, Aug. 8, 1894.

Everett Jolly, Hardinsburg, Ky., bought of Bloomingdale Bros., importers and retailers, 7045 Third avenue, 59th & 60th Sts.

80	2 shirts.....	1	18
	Postage.....		16
			<hr/>
	Cash.....	1	34
	Cr.....	1	18
	Ret.....		22
			06

Envelope.

Bloomingdale's, Third Ave., New York.

EVERETT JOLLY,

P. O. Box 26.

Hardinsburg, Breckinridge Co., Ky.

"Largest factory in the world producing advertised shoes.

BROCKTON, MASS, July 19, 1894.

DEAR SIR: Yours of the 16th at hand. The shoes were shipped you on the day that you wrote. Think you must receive them before you get this letter.

Yours truly,

W. L. DOUGLASS SHOE CO.,
By W., Clerk."

Envelope.

W. L. Douglass, Brockton, Mass.

EVERETT JOLLY,

Hardinsburg, Ky.

"ST. LOUIS, 7, 31, 1894.

Everett Jolly, Hardinsburg, Ky., bought of Mott & Baker, dealers in fine footwear of every description, 610 North Broadway.

1	pr. shoes.....	3	50
1	" inf. shoes.....		75
	Prep. exp.....		40
			<hr/>
81	By cash.....	4	65
			4 55
	Bal.....		10

We substitute a little patent crump shoe for which we have been getting \$1.00. Trust they will be satisfactory.

MOTT & BAKER."

Envelope.

Mott & Baker, 610 N. Broadway, St. Louis.

EVERETT JOLLY,
Hardinsburg, Ky.

The Christy Knife Co.

FREMONT, OHIO, U. S. A., *July 9, 10, 1894.*

Everett Jolly, Hardinsburg, Ky.

DEAR SIR: We own to your valued order of the 8th covering remittance of \$1, for which we sent prepaid by express one set Christy knives. We beg leave to enclose descriptive circulars and price-list of all the articles manufactured by us, and would be pleased to receive your further orders. Hoping your experience in the use of the knives may be of such a character as to merit your approval, we remain,

Yours very truly,

THE CHRISTY KNIFE CO.
C. C. TUNNINGTON,
Ass't Sec'y.

Envelope.

Return to The Christy Knife Co., Fremont, Ohio,
if not delivered within ten days.

EVERETT JOLLY,
Hardinsburg, Ky.

The Christy Knife Co., Fremont, Ohio.

FREMONT, O., *Aug. 16, 1894.*

Everett Jolly, Hardinsburg, Ky.

82 DEAR SIR: We are in receipt of your valued order of the 14th enclosing \$1, for which we send prepaid by express 1 set Christy knives, as desired.

Also send you price-list, etc.: will forward you in a week or so descriptive circulars of our meat-pounder, which bids fair to be a very ready-selling article.

If you will return this letter with your first remittance of \$2.50 or over, we will include an extra set in consideration of your having paid retail price for the samples.

Yours very truly,

THE CHRISTY KNIFE CO.
C. C. TUNNINGTON, *Ass't Sec'y.*

Envelope.

Return to The Christy Knife Co., Fremont, Ohio,
if not delivered within 5 days.

EVERETT JOLLY,
Hardinsburg, Ky.

16. I desire to offer these stamps, said by the witness to have been rendered by Mr. Jolly out of his trunk. These stamps that you got

out of the trunk, Mr. Vickery, have you a memorandum of the amount that you have made of them?

A. Yes, sir; I have it somewhere.

17. I wish you would refer to that and tell the denominations and the sum total of it.

A. Stamps turned over by Mr. Jolly at his room: 2,400 two-cent stamps, 2,683 one-cent stamps, 191 four-cent stamps, 100 one-cent postage-due stamps, a total of \$163.12 in value.

83 Here are two letters of his own that he turned over, delivered to me by the addressed and admitted by him to have written them: "Hardinsburg, Ky., July 29th, 1894. Mott & Baker, St. Louis."

(Defendant moves to exclude that letter because no reference to stamps is made therein.)

Mr. SMITH: Mr. Vickery says he produced that letter to Jolly and he told him he sent stamps in that letter to pay that bill.

The COURT: If it is connected with that statement it is competent.

Mr. SMITH continues: Hardinsburg, Ky., August 13th, 1894. Spaulding & Bro., Chicago.

18. I don't believe you had gotten further along than where you had met Mr. Bullington when I stopped you.

A. We went back to the house, and in Mr. Bullington's presence—I say I introduced him merely as Mr. Bullington, and not as marshal, and, as far as I know, Mr. Jolly didn't know his official position. We again talked over the things we had talked about, and in my presence Jolly made the statement to Mr. Bullington that he had made to me in regard to getting the grip and throwing

84 it between the two rooms when McClure had gone home.

I am not sure that Mr. Bullington took an account of the stamps. I think he did; but after the stamps were counted Mr. Bullington read the warrant to him and put him under arrest, and we took him from there to Louisville. After the stamps were counted over he stated to Mr. Bullington what he had stated to me, how he had come into possession of the grip, and that he had burned it before he was arrested.

Cross-examined by Mr. WATHEN:

19. Have you stated the whole conversation now that passed between you and Jolly?

A. No, sir; because there was a great deal in the talk at the post-office of a rambling nature, that if I were to go into all that I could not remember all, in the way of joking with him about playing ball, base ball, and playing with Amos Board. There were a number of things I talked to him about before we had the conversation of the grip, and we were having a perfectly easy conversation about the grip, and we were having a perfectly — conversation about the

85 things, but I knew positively in my own mind that he had the stamps, but I was talking to him just as I would to any person in an ordinary conversation, about playing ball, etc.

As near as I can remember, as I started with Jolly, I told him that heretofore, as he remembered, I had been in the town twice since the robbery; that I had never asked him anything about it at all, but I said, "Before the matter is closed I must have a talk with you about it, because I understand you were out with young McClure." I asked him if he was drunk, and he said "he was drinking." I asked him if he had been round with Mr. McClure, and he said he had, and I asked him whether he was drunk before he started out, after the office had been closed that night, and he said "he had been drinking during the day, and that his recollection was probably not clear." I asked him if he was at the office more than once, and he said, "Several times." I asked him if McClure was in the habit of getting drunk, and he said "he never knew McClure to be drunk before that night," and he left the impression that McClure was so drunk that he went home earlier than Jolly did, and Jolly

86 wandered about the town, and one time, not the first time, Jolly had noticed this grip by McClure stumbling over it, and he picked it up and threw it out in the alley, say three or four feet wide, between the post-office and the adjoining building, and he had gone again with McClure and went, I don't know what part, but I think to some disreputable part of the town, and after that young McClure had gone home he went back past the place and got this grip and carried it away with him. That is the outline of the conversation. I can't give the details of it because I never paid much attention to it. I was interested in the main facts that I was after.

20. What did you take him back in the post-office for, to ask him these questions?

A. Well, I didn't take him back. Jolly was across the street, as I recollect it, and I wanted to have a conversation with him and with as little danger of being heard as possible. Had I gone out in the street the whole town would have been listeners. I took him back in the post-office. Mr. Cox let us go back there to get as far away as possible.

21. What did you want to take him back there for?

A. To be free from any interruption.

87 22. What for?

A. Because I wanted to talk to him about these stamps.

23. You had a warrant?

A. I had a written warrant with the marshal.

24. You wanted to get a confession?

A. My purpose was to tell him——

25. Your purpose was to get a confession out of him?

A. My purpose was to locate the stamps if I could, to get him to tell the truth if I could.

26. What did you ask him if Amos Board had anything to do with it for?

A. Because I had heard the same story about Board having to lock up the post-office, and because I wanted to see whether Jolly was one of the parties that the boys were accusing of taking these stamps.

27. You had a warrant for Jolly ?

A. Yes, sir.

28. You had the letters in your possession ?

A. Yes ; with these stamps.

29. But these other letters ?

A. I had three letters in my possession at that time. I thought if these other boys had been mixed with Amos up in it, I might find out from them.

88 30. From Amos ?

A. I was getting Jolly to tell me if he had any part of them ; I knew he had some ; I didn't know how many.

30. Have you got these letters in your pocket now ?

A. Yes ; with the stamps.

31. Now, you asked him if he had anything to do with it, and he denied it ?

A. I asked him if he saw the grip, and he denied it at first, and then I asked him if he had anything to do with the stamps, and he said he had had no stamps of any quantity for a long time, and laughed at it. I said, " Here are these letters," and he owned that. Then I said, " What did you do with the grip ?" and he said " he burned it." He had lied to me.

(Defendant here objects to witness using such language ; which objection the court sustains.)

32. You showed him the letters before you asked about the grip ; what did you do that for ?

A. Because I didn't suppose he would own up about the grip unless he knew I knew something about it.

33. Then you showed him the letters in order to get him to tell you about the grip ?

A. I held up these letters and I asked him what he had done with the grip ?

89 34. Why did you do that ?

A. Because I thought that would make him tell what he knew about the grip.

35. Was your idea that that would put him in fear ?

A. Not in the least.

(Plaintiff submits that when the witness tells what was done that that is sufficient without telling why, and objects to the questions ; which the court sustains.)

36. Now, you say he made some confession in the presence of Bullington ?

A. He made the same as we walked up the street and as we were in the room, where he got the stamps.

37. You walked up the street of Hardinsburg ?

A. Yes, sir.

38. The main street of the town ?

A. We walked along the opposite side, in front of the court-house, pass the opposite side of the hotel, up to Jolly's residence.

39. How many times had you been there before ?

A. Twice.

40. It don't take long to tell that.

A. I don't suppose it does, but I don't know the name of it, whether it is the main street or not.

90 41. I didn't call it by that name. You say he was confessing to you as you went up the street again; what questions did you ask?

A. In the first place, I said to Bullington that Jolly was going to the house to get the stamps, and he said he had burned the grip and money orders, and Jolly was saying that he regretted it; that he was sorry, because his mother was sick, but that he was glad to confess. I don't know of asking Jolly any questions. There was an incidental remark, one way or another, but I could not tell you what it was.

42. I wish you would try to remember just what it was.

A. I was trying to get him to confess in the presence of another person, because I knew one person's statement would not be taken as well as two. I mentioned to Bullington that Jolly had burned the grip, and also that there was talk with regard to his taking the grip from the front room of the office and throwing it between the buildings.

43. Well, did he admit these letters again in the presence of Bullington?

91 A. I don't know positively that he did. All that he admitted to the presence of Bullington was that he had burned the grip; that he had taken the grip from the office, carried it home with him, and destroyed it—burned it. I don't remember how much more, because I didn't draw a distinct line between the two times, but it was the same that he told me.

44. You say that the conversation was continued when you got in the room?

A. Yes; a running fire of conversation as he got out the stamps.

45. Did he tell you again, the third time?

A. I don't know. I reported it right along. The recovery of these stamps was, in the main, what I was after. How much more he said to Mr. Bullington I don't know.

46. Was Mr. Pickard in the room when he was talking?

A. Mr. Pickard came in the room and probably asked some questions, and our answers, in all probability, were not very satisfactory, because we did not want to annoy Mrs. Jolly, who was in bad health, downstairs; but I am sure Mr. Pickard came to the room while the stamps were being counted and wrapped up.

47. Was he making confessions while Mr. Piggott was in there?

92 A. I don't know. Mr. Piggott got excited and was asking what was the matter, and I know the feeling on my part was to keep things in the house as quiet as possible. How much I told Mr. Piggott I don't know. We left the impression that we were taking Everett on account of McClure's troubles in the post-office because Everett's mother was sick.

48. I don't remember, Mr. Vickery, what time you said Mr. McClure ceased to be postmaster there.

A. He resigned June 7th. Jno. Cox, I think, took the office from McClure. It was the same day I went to Hardinsburg for the first time. I happened to drop in while they were transferring the office.

49. Had his term expired then?

A. Well, a new man had been appointed and qualified. I don't know how deep in his term he had got. This is a fourth-class office and they have no fixed terms, but are removable or changeable at the pleasure of the Postmaster General. His term may expire when they see fit.

Adjourned until nine o'clock Monday morning.

Met pursuant to adjournment.

93 50. Mr. Vickery, we are now speaking of the bundle of letters that you said on Saturday were delivered to you by Mr. Jolly at the time that you were in his room. Please state all that occurred in regard to these letters and all that was said.

(Defendant objects to the examination of Mr. Vickery on that point.)

A. I answered these questions the other night very fully.

51. As there is some misapprehension as to what you said, I want you to state what you stated before in regard to that bundle.

A. I had asked Mr. Jolly—he had admitted using the stamps in the letters which I showed him. I then asked him if he had sent away any other stamps, and he said he had, and I asked him if he could tell how many. He produced a bundle of letters and said that correspondence related to stamps which he had sent away or used as far as any payment—were made. We took the package of letters and, running over them, I made in his presence a list of the items denoted by these letters. In addition to that, there are some letters there that do not mention the accounts. In addition

94 to the letters themselves, Mr. Jolly gave me four payments that are not shown in amount in these letters, and said they were bought with stamps from this same lot, making a total of \$31.26 in addition to stamps I showed him that night, which was over ten dollars. We were then attempting to count. He had stated that the amount of stamps used was somewhere over \$30, and he supposed \$40 would cover it, and he said that would be sufficient to cover the amount. I think that was mentioned Saturday.

(The court allowed letters to be read to the jury, to which the defendant excepted.)

Mr. Smith then read letters to the jury.

NOTE BY CLERK PREPARING THIS RECORD.—All letters admitted as evidence and read are on the following pages of this record, to wit, 72 to 83, inclusive.

Cross-examined by Mr. WATHEN :

52. Mr. Vickery, I don't exactly understand. What was that you said? What statement was it he made in addition to these letters at the time that you just stated this morning?

A. With what he turned over the bundle of letters to me?

53. Yes, sir.

95 A. I asked him whether he had or had not used a number of other stamps in payment of merchandise and if he could tell how much or how many. He said that he had all the correspondence relating to it that he had there in addition to that. We went over the correspondence then, and from these letters we took down the amounts as far as they were indicated, and there were three or four items he recollected in addition. I put these down in ink with a pocket pen on a memorandum I have here. Then, in addition to these letters, he gave me 4 amounts, which I put down in lead pencil here. Some of the amounts are not mentioned in these letters, but to which the letters relate. For instance, there is the Douglas letter. But he gave me four additional items that the letters did not account for in direct amounts, and I put these down in lead pencil, attempting to sum up the amount of stamps used. He was trying to tell me all the stamps he had disposed of to make out the total amount. My question was put directly to him, "Would \$30 cover the amount he had disposed of, outside of what we got?" He said that he did not know, but that \$40 would.

54. Now, I just want to know, did you make that statement Saturday or not?

A. Yes, sir; I recollect making Saturday night that we had taken the letters and made out a list of payments.

55. Just answer that question yes or no. Did you make that statement Saturday night or not?

A. To that effect. I made a statement of that memorandum that I made in his presence.

56. Who was present when he made that statement to you and surrendered these letters?

A. I don't know whether they were surrendered in Mr. Bullington's presence or not. My impression is that these letters were turned over to me at the post-office. It may have been at the room. It was in Hardinsburg, I know.

57. Do you mean to say that all these letters that have been read, that he had them in his pocket and turned them over to you?

A. My impression is he mentioned these letters at the post-office, and whether he turned them over to me at the post-office or at the room I don't know.

97 58. Did you make the memorandum at the post-office?

A. I made the memorandum after the letters were turned over to me, whether at the house or at the post-office I am not sure.

59. You cannot be positive about that?

A. Not as to the place. I am positive as to the memorandum.

60. Are you positive as to whether he gave you any of these statements in the presence of Mr. Bullington?

A. I am not positive.

61. What is to prevent you from remembering that?

A. The main part of the transaction, the large bulk of the stamps and his owning to destroying the grip, were the principal things.

62. This came after any attempt to count up the number of stamps disposed of?

A. It was incidental. It was after he had made a clean breast of the matter.

63. And that was a mere secondary consideration with you?

A. Yes, sir.

64. And your impression is that you made that secondary consideration and count, investigation, at the post-office before you went to the house?

98 A. My impression is that he mentioned that after telling me the stamps were in the trunk. I knew that the main thing was to know the stamps were missing, but I am not positive whether it was at the post-office or the room that I made the memorandum.

65. Your object was to account for these that he had not on hand?

66. Yes; he had told me of a small amount that he had on hand.

Q. How much did he say?

A. I think the first statement was seven or eight dollars.

67. And he offered to take you and show them to you?

A. He said they were in the trunk, and my impression is that these letters were produced afterwards down there. I won't be certain, Mr. Wathen, that the memorandum was made immediately on the presentation of the letters. The letters were turned over and afterwards we took these up and went into details.

68. Could you remember what pocket he took these letters from?

99 A. No, sir; I am not absolutely positive that he took them from his pocket at all. My impression is that he took them from the inside pocket of his coat. He had a memorandum book and he showed that first. The letters were produced afterwards.

69. He told you he had seven or eight dollars' worth. Did you read these letters over at the post-office?

A. No, sir; not all were read at the post-office; not the whole number of letters. The tabulation was made after he turned them over. I am certain that we did not read the whole number of letters at the post-office.

70. Just read a portion.

A. I am not certain that we read any. We did not read. I am not certain that he took them from his pocket. He produced something from his inside pocket at the post-office. It may have been the memorandum book, but these letters were all taken from his trunk.

MOSES BULLINGTON, being duly sworn, testified as follows:

Examined by Mr. SMITH:

100 1. Mr. Bullington, in 1894 were you a Government officer?

A. Yes, sir.

2. What position did you hold?

A. Deputy U. S. marshal.

3. Did you arrest Mr. Everette Jolly at Hardinsburg during that year?

A. Yes, sir.

4. Do you remember the date?

A. About August 24th.

5. Who was with you at the time?

A. Mr. Vickery.

6. W. J. Vickery, the post-office inspector?

A. Yes, sir.

7. Where was he at the time you arrested him?

A. He was at his mother's house.

8. In what part of the house?

A. He was upstairs.

9. Where did you get with him first?

A. I got with him and Mr. Vickery on the street; met with them on the street.

10. You didn't make the arrest, then, until you got up in the room?

A. No, sir.

11. Did you have any talk with him or hear him have any talk with Mr. Vickery after you got in the room or anywhere else, either before or after the arrest?

101 A. Before the arrest.

12. Where was it?

A. Upstairs in his mother's house.

13. What conversation did you have with him or hear Mr. Vickery have with him?

A. Well, he talked about how he came with them stamps while we went over with him and went upstairs, and he opened up his trunk and got out the stamps, and we sat down and counted them, commenced counting them, and while we were counting he kept talking about how he came by them.

14. What did he say?

A. He said that on the night he got them, as well as I remember, him and young McClure were drinking—had some brandy, I think—and along early in the night they took a little stroll through the town and went back *and went back* and stayed a while, and he proposed to McClure that they go out in town again. It was early yet, and they went out a second time and left the grip setting right as they went out the door on the floor; and he said young McClure unlocked the door as he went in and was pretty drunk and
102 stumbled and fell over the grip, and he reached down and picked up and set — on the outside—I am not sure whether

between the houses or in the shade of the house. He set it out there, and McClure was so drunk that he didn't notice him, and he said they stayed about half an hour and he proposed they break up for the night and go home, and they locked up and left and he went a short distance with McClure and then went back and got the grip.

15. Did he say what building this was?

A. Post-office.

16. Did he say anything about the disposition he made of the grip?

A. He said he burned it up.

17. Speak of anything else in the grip except that?

A. Yes, sir; something else in the grip that he burned up; I don't remember what it was; I think he burned everything except the stamps, from what he said.

18. Was there any promise of leniency or any promise of any nature made to him at the time, either by you or Mr. Vickery, to induce him to make any confession—to make this statement?

103 A. I never made any and never heard Mr. Vickery make any, because I never let him know that I had the warrant until I was ready to leave the room, and then I went down in my pocket and got the warrant and told him the charge against him; — was the first he knew about having the warrant.

Cross-examined by Mr. WATHEN:

19. Mr. Bullington, you were deputy marshal at the time, I believe?

A. Yes, sir.

20. Now, where did you start from that morning?

A. Hawesville.

21. Where did you and Mr. Vickery meet that morning?

A. At Hawesville.

22. And you went up to Irvington and went down over the Hardinsburg and Western?

A. Yes, sir.

23. You got to Hardinsburg about noon that day?

A. Yes, sir.

24. Where did you go to as soon as you got there?

A. Mr. Vickery went on ahead of me a few minutes from the depot. I stayed at the depot about 15 minutes, and Mr. Vickery went on down town.

— Where did you meet Mr. Jolly when you first saw him?

104 A. He came out of the post-office with Mr. Vickery. I was on the opposite side.

25. And they went over and joined you?

A. I went over and joined them.

26. And he introduced you to him and you went on up to the house?

A. Yes, sir.

27. And after you got upstairs in the room he made the statement to you that you say he made?

A. First went into the trunk and got out the stamps, and he gave this conversation while we counted the stamps.

28. And he first got out the stamps and he voluntarily began this conversation? Nobody brought up the subject except himself?

A. I don't know about that. I think he just made his statement. I don't know whether Mr. Vickery asked him to make the statement or not.

This was all the evidence introduced on the part of the Government.

The defendant, to maintain the issues on his part, introduced the following witnesses: David R. Murray, Amos Board, Taylor Bell, Clint Bell, and Herbert Beard.

DAVID R. MURRAY testified as follows:

1. Where do you live?

A. At Cloverport, Ky.

105 2. Do you practice law in Breckinridge county, of which Hardinsburg is the county-seat?

A. Yes, sir.

3. Were you at Hardinsburg on the night the loss of these stamps is said to have occurred?

A. Yes, sir.

4. Did you see Everett Jolly that night?

A. Yes, sir.

5. What time and where?

A. It was not earlier than ten o'clock.

6. Where did you see him?

A. At the brick hotel.

7. What was his condition?

A. He was drunk. I was down there having some music (I play the violin sometimes), and he came in and rendered himself disagreeable by reason of being drunk; and Amos Board and I had been together since early in the evening, and I told him to come on and we would go.

8. Was he considerably drunk?

A. He was considerably under the influence of liquor.

9. I wish you would state where this post-office is.

106 A. On the main thoroughfare of the town, north of the principal street of the town, which runs north and south, and it is on the west side of the street from the court-house.

10. How far from the court-house?

A. Well, the middle of the street, and I would say one-half of the square—nearly one square.

11. The court-house is in the public part of the town?

A. Yes, sir.

12. I will ask you if in the summer the court-house yard isn't a great resort for the people of the town, late and early?

A. Yes, sir; and I have stayed out there sometimes late myself.

13. They gather there?

A. Yes; this is a loafing place. There is a public cistern in the court-house yard used by the citizens; cup hanging to it.

14. Did you see McClure—Louis McClure—that night?

A. I couldn't say that I saw him. I knew that some one was there with Jolly. There was more than one, but I wouldn't say it was McClure.

15. That is not the hotel where you stopped?

A. No, sir.

16. When you left there you went to your hotel?

A. Yes, sir.

17. Was Amos staying at the hotel where you stopped?

107 A. No, sir; he and I went to prayer-meeting or some services in the Methodist church just after supper, and when we left there we went up to Clint Lewis's music store and had some music, and he proposed going over to this brick hotel, and we went there and left together about ten or a little after.

18. You left Jolly at the brick hotel?

A. Yes, sir; I believe there was a breaking up when I quit.

19. So far as you know?

A. Yes, sir; I think we were ahead of any one else when I left, going up the way I did.

Cross-examined by Mr. SMITH:

20. What night did you say that was?

A. That was the night before the next morning I heard the loss of the stamps talked about.

21. What year was this?

A. This spring two years ago.

22. '94?

A. '94, I guess.

23. In the spring. You don't remember the month?

A. I don't remember.

24. You were at the hotel—the brick hotel?

A. Yes, sir.

25. Playing at the hotel?

108 A. Yes, sir.

26. No dancing?

A. No, sir. It is one of my weaknesses to play the fiddle once in a while.

AMOS BOARD testified as follows:

Examined by Mr. WATHEN:

1. Where do you live?

A. Hardinsburg.

2. Were you living in Hardinsburg in 1894?

A. Yes, sir.

3. Do you know Thos. McClure?

A. Yes, sir.

4. And Louis McClure and Everette Jolly?

A. Yes, sir.

5. Were you staying with Thos. McClure in the post-office there in 1894?

A. Yes, sir.

6. Were you at Hardinsburg the night that these postage stamps were said to have been lost or taken?

A. Yes, sir.

7. Do you remember the night the thing is said to have occurred, the occurrence?

A. Yes, sir.

8. Where were you that night?

A. I closed the post-office at eight o'clock.

109 9. Who was with you at the time you closed it?

A. Louis McClure.

10. Now, the postage stamps, where were they, do you know?

A. Yes, sir.

11. Where?

A. They were in a hand grip about that long (measuring with his hands).

12. You say you closed at eight o'clock?

A. Yes, sir.

13. Was Louis McClure there then?

A. Yes, sir.

14. Which went out first?

A. Well, I think he did. I locked the door myself.

15. What went with this grip then?

A. He had it with the strap round his shoulder.

16. Did he go out with it round his shoulder?

A. Yes, sir.

17. Did you go back into the post-office that night after you locked it up?

A. Yes, sir. I came out the door and started one way and McClure the other. I suppose I got 20 yards when I met Taylor and Clint Bell, and they asked me to go back and get their mail,

110 and I went back and got the mail.

18. You went back and got their mail?

A. Yes, sir.

19. Did Louis go back with you?

A. No, sir; he didn't go back with me.

20. Did he come back while you were there?

A. If he did I didn't see him.

21. Would you have seen him?

A. I was behind there giving the mail. If he had I could have seen him.

22. Did you see him come back there?

A. No, sir.

23. Did you see that grip?

A. No, sir.

24. Did you see that grip any more?

A. No, sir.

25. Have you ever seen it?

A. That is the last time I have seen it.

26. Was the lamp in the post-office lit when you went back to get the mail?

A. I lit the lamp myself.

27. That was about eight o'clock?

A. Yes, sir; I closed the office at eight o'clock.

29. Was Louis McClure drinking any that evening?

A. He hadn't been in the office. He just came in before I closed up; just came in to go home.

111 30. Do you know whether he was drinking any or not?

A. No, sir; I don't know; not at that time.

31. Did you see Everette Jolly that night?

A. Well, I couldn't say whether I saw him or not. I was at Mr. Hayden's hotel, Mr. Murray and myself, and Mr. Murray made the remark that "there is a drunken crowd here and let's go home," and with that we broke up, about ten o'clock.

32. What time was that?

A. I couldn't say exactly.

33. The best of your recollection?

A. Between ten and eleven.

34. Did you see McClure there then?

A. No, sir.

35. You don't know whether you saw Jolly or not that night?

A. No; I could not say.

36. Do you know how many stamps were in that grip?

A. No, sir; I don't know.

37. I mean about the value.

A. No, sir; I never counted them.

38. Do you know who put the stamps in the grip?

112 A. Well, the stamps were in the grip and kept there. They wasn't taken out during the day, only just when we would need in the use of the office.

Cross-examined by Mr. SMITH:

39. We will say that was the room (showing a diagram on a piece of paper) of the post-office. Is the division that divides the front from the rear part midway here?

A. No, sir; not midway back.

40. Little further to the front?

A. Yes, sir.

41. Leaving more space to the rear. How would that be?

A. That would be about proper (referring to the measurements made on diagram).

42. Well, was the door the front door? This is the east here.

A. Front door here; yes, sir; in this end of the building; it is a double door.

43. Where was the door that went from the partition back into the rear department?

A. About here.

44. About the center?

A. No; a little beyond the center, to the left.

45. Standing in the building to the right or left; over here, then?
- 113 A. No, sir; as you go into the building; the front door.
46. Now, where are the lock-boxes?
- A. They have no lock-boxes.
47. Where are the boxes to the post-office?
- A. Here, sitting on the counter.
48. How high are they?
- A. Well, I suppose those boxes are 5 inches square, and there are 144 of them in that space.
49. You have to reach higher than your head?
- A. Yes, sir.
50. That is solidly closed up with glass boxes?
- A. Yes, sir.
51. How is this side closed over here?
- A. That had a wire with a trap-door; there is no door to open, just a door to raise up on the hinges.
52. You went back behind these boxes?
- A. Yes, sir.
53. You had the light back here?
- A. Yes, sir.
54. Was there any light in the front part?
- A. No, sir. Here was the boxes; there is where their mail was. I was getting it in front of that table. I stood the lamps
- 114 there.
55. It was not behind the boxes?
- A. No, sir.
56. You were not paying any attention?
- A. No, sir.
57. Do you say you know McClure was not back in there?
- A. I know he was not in the rear part, but I won't say that he wasn't in the front part. I could see he didn't come in, because I was standing right there.
58. You mean in the back part?
- A. No, sir. Well, he told me—
59. I am not asking about that.
- A. I didn't see him inside the building at all.
60. How far had you gotten from the door when you met those Bells?
- A. Twenty yards, I suppose.
61. Weren't you both standing at the door when the Bells called you?
- A. I was at least twenty yards off, up in front of another store.
62. Did you see him with the grip at the time you came out the door?
- A. He came out the door and I locked it, and he went one way and I went the other.
63. Where is that alley?
- 115 A. Right here.
64. This is south?
- A. Yes, sir.

65. The alley is on this side?

A. Yes, sir.

66. Was there a table that sat in that front room?

A. Yes, sir.

67. Whereabouts with regard to the door?

A. Right here.

68. How close?

A. Up to the wall.

69. With the end extending here?

A. No, sir; the end stood this way.

70. How far was it from the door to that table?

A. I suppose 15 inches. I suppose the table is about $2\frac{1}{2}$ of three feet wide.

71. Well, how far do you suppose it was from that corner?

A. Well, the door is right in the center of it.

72. And that table is about three feet wide and sat in the corner?

A. There is a double door, and this opened this way.

73. About $2\frac{1}{2}$ or 3 ft. doors, each of them?

116 A. No, sir; I would say all the whole thing was about four feet wide.

74. You had a jug of brandy there?

A. I don't know what was in the jug; there was one came; I didn't see it opened.

Redirect examination:

75. You didn't have anything to do with it; it wasn't yours?

A. No, sir; I didn't know it was there until it came in that day, and then I never saw what was in it.

76. In reference to this alley, it is on the south side of the building from the court-house?

A. Yes, sir.

77. The building sits east and west, and that alley is on the south side and faces the east.

78. How wide is that alley?

A. Four or five feet.

79. What kind of a building is right next to the post-office building; what building does this alley divide?

A. Mrs. Heston's property; there is a yard fence runs along there.

80. Dwelling-house?

A. Yes, sir.

117 81. What is on the other side of this dwelling-house?

A. J. W. Keef'-dry-goods store.

82. Is there any space between that store and post-office building?

A. There is a little space a foot or foot and a half wide.

83. Do you know whether this dry-good sstore was open when you left that night?

A. I could not say.

TAYLOR BELL, being sworn, testifies as follows :

1. Where do you live ?

A. I live near Hardinsburg, two miles from Hardinsburg, in Breckinridge Co.

2. Do you live on a farm ?

A. Yes, sir.

3. Now, do you remember the night that these stamps were said to have been taken from the post-office ? I don't mean the day of the week, but the occurrence ?

A. Yes, sir.

4. Were you at Hardinsburg that night ?

A. Yes, sir.

5. What time did you go there ?

A. It was about seven o'clock, I reckon—between seven and eight.

118 6. What time did you go to town ?

A. It was about that time. I wasn't there but a few minutes.

7. What did you go for ?

A. I went mostly for the mail.

8. Who went with you ?

A. My brother.

9. What was his name ?

A. Clint.

10. Did you go to the post-office ?

A. Yes, sir.

11. Was it open or shut ?

A. It was shut when we rode up and hitched our horses. They had just come out.

12. Who came out ?

A. Amos Board and Louis McClure, and they locked the door.

13. Had they left the door ?

A. They just had got out on the street. They started off ; I don't know which way.

14. Did both start the same way or in opposite directions ?

A. I don't remember.

15. Who came back to get your mail ?

A. Amos Board.

119 16. Did he open the door ?

A. Yes, sir.

17. Did you go in ?

A. Yes, sir.

18. Did Louis McClure go back there ?

A. No, sir.

19. Was he in the post-office while you were in there getting your mail ?

A. No, sir.

20. Were you in the front of the building ?

A. Yes, sir.

21. Was there a lamp in there ?

- A. Amos went in and lit the lamp.
 22. There was a light while getting the mail?
 A. Yes, sir.
 23. Was your brother inside?
 A. Yes, sir; Clint came inside.
 24. You say Louis didn't come in there?
 A. No, sir.
 25. Did he come inside and set down a satchel?
 A. No, sir.
 26. Was he anywhere about that building when you came out?
 A. Yes, sir; he was standing out on the sidewalk.
 120 27. How far from the building?
 A. Five or six feet; maybe not that far.
 28. Did you see that satchel at all?
 A. I couldn't swear that I saw the satchel, but I think that he had something—a strap or something—on his shoulder.
 29. That Louis McClure did?
 A. Yes, sir.
 30. It was dark on the outside?
 A. Well, it was not so awful dark that I couldn't see.
 31. I mean it was thick?
 A. Yes, sir.

Cross-examined by Mr. SMITH:

32. At what time was it that you first saw Louis there?
 A. As soon as I got to the post-office, between seven and eight o'clock; when we got there.
 33. You saw him, then, before you went in?
 A. Yes, sir.
 34. Standing there at the door?
 A. He was standing from the door a piece.
 35. Five feet, you said?
 A. Yes, sir.
 36. About the width of the pavement?
 A. Yes, sir.
 121 37. And he was just standing at the door when you went in there?
 A. Yes, sir.
 38. Did you speak to him there?
 A. Yes, sir.
 39. Standing right opposite the door?
 A. I couldn't say he was standing opposite the door.
 40. But about five feet from it?
 A. Yes, sir.
 41. Did your brother speak to him?
 A. Yes, sir.
 42. You went into the building, then—say that this represents the building (showing diagram)—he was standing somewhere about five feet of that door?
 A. Yes, sir.

43. Here's the front part of the building. Where did you go to get that mail? Say here's the boxes, here's the gateway, and here's the boxes over here.

A. I reckon over there.

44. Board went behind there, didn't he?

A. Yes, sir.

45. You didn't go behind there?

A. No, sir.

122 46. Your attention was called here, receiving the mail?

Could you swear he didn't reach in there or step in the door and set the satchel in?

A. I couldn't say he didn't reach in, but he didn't step inside the door.

47. Didn't come inside the door at all?

A. No, sir.

48. You can't say but what he stepped up on the step and reached his hand in? Is there a doorstep of any height before you go in?

A. There is a doorstep, but it is not very high.

49. As high as this concern (touching the witness stand with his foot)?

A. Yes, sir.

50. You say he didn't step on that and reach in?

A. I didn't see him reach in.

51. If you didn't see him, couldn't he step in and reach around there without you seeing him?

A. I don't think he could.

52. Anything special to call your attention to him at that time?

123 A. I wasn't paying any attention. I was paying attention to Board giving me the mail.

53. How do you know that you was not paying any attention, on general principles?

A. Yes, sir.

54. You didn't watch the door while you were getting your mail?

A. I would just go up and wait.

55. Did you have any occasion to watch the door that night?

A. No, sir.

56. That occurred in 1894. When was your attention first called to the fact that he didn't go in there that night?

A. I don't know what you mean.

57. When was your attention first called to the fact that Louis McClure claimed that he went in there that night at the time you were there? When did you first hear that?

A. It was, I believe, the next day—in a few days after that.

58. And you remembered then that he was standing out there at the door when you came up, and that he didn't go in at all?

A. Yes, sir; he was standing right where I left him when I went in when I came out.

124 59. Is that the reason you think he didn't go in?

A. Yes, sir.

60. Couldn't he have come in and gone back in the same place?

A. I suppose he could.

61. Was he in the same tracks?

A. I don't know that he was.

62. He was standing the same distance?

A. Yes, sir.

63. You had your back to the door part of the time?

A. I did when I went in.

64. And when you walked up to receive your mail you had your back to the door?

A. Board brought the mail out. I walked up there and turned around.

65. You remember now that you turned round?

— I turned round. Board said he would bring the mail round.

66. How came you to turn round with your face to the door?

A. I don't know.

67. But you remember for a dead certainty that you did do that?

A. Yes, sir; I did do it.

125 CLINT BELL, being sworn, testifies as follows:

Examined by Mr. WATHEN:

1. Where do you live, Mr. Bell?

A. Breckinridge county, Ky.

2. How far from Hardinsburg?

A. About two miles.

3. Do you live on a farm?

A. Yes, sir.

4. Do you remember the time this post-office there—the stamps were said to have been taken from the post-office? I don't mean the day of the week, but do you remember the night it occurred?

A. Yes, sir.

5. Were you in Hardinsburg that evening?

A. Yes, sir; I was there that night.

6. Who did you go with?

A. My brother.

7. What time did you go to Hardinsburg?

A. I expect between seven and eight o'clock, I reckon.

8. Where did you go when you first got there?

A. We went to the post-office; hitched right close to the post-office.

9. Then where did you go?

A. Right on to the post-office.

10. Who was at the post-office?

126 A. Well, Amos Board and that McClure boy had just come out.

11. Had they locked the post-office door?

A. Yes, sir.

12. Had they started off?

A. They had just locked the door and stopped outside.

13. I mean when you rode over. Had they started off?

A. I couldn't say.

14. Did you call either one?

A. I never; my brother did.

15. Whom did he call?

A. He didn't call any name; he just wanted to get the mail.

16. Who went back to get the mail? Did anybody go back to get the mail?

A. Yes, sir; Amos Board.

17. What did he do when he got back there?

A. He went round behind the bars and got the mail.

18. Was it dark in the room?

A. He lit a lamp as he went in.

19. Did you go into the building?

A. Yes, sir; I stepped up inside.

20. Did your brother go into the building?

A. Yes, sir.

127 21. Now, tell the jury if Mr. Louis McClure came into the building while you were there?

A. No, sir; he never.

22. Did not?

A. No, sir.

23. Did he come in there while you was getting your mail and put a satchel under that table?

A. Who, McClure?

24. Louis McClure.

A. No, sir.

25. Well, did he come in at all?

A. No, sir; not while we were in there.

26. Now, how far—you say you stepped up in the room—how far did you go from the door?

A. I stepped right inside and turned round and stepped back to the door.

27. Stood in the door?

A. Yes, sir.

28. Did he reach his arm in and put the satchel there?

A. No, sir.

29. How far from the door was he when you came out?

128 A. He was standing outside on the step. I don't know whether he was on the step or walk.

30. Did you see him with the satchel?

A. No, sir.

31. When you first came up?

A. No, sir.

32. At all?

A. No, sir.

33. When you came out, did anybody lock the post-office?

A. I could not say whether they did or not. Amos blowed out the light and came out. I couldn't say whether he locked the door or not.

34. Did he come out while you were there?

A. Yes, sir.

35. Come out of the post-office?

A. Yes, sir.

36. After you got your mail, what did you do?

A. I went across the street to Jas. Gardner's store.

37. Did you see Louis McClure or Amos Board any more that night?

A. No, sir.

38. Did you see Everette Jolly?

A. No, sir.

129 39. Did you go home soon or late?

A. Yes, sir; I went right back home.

40. Did your brother go with you?

A. Yes, sir.

Cross-examined by Mr. SMITH:

41. Mr. Bell, what is your given name?

A. Clint.

42. What is your brother's given name?

A. Taylor.

43. When you rode up that night where did you see Board and McClure?

44. Just as they came out of the post-office.

45. Did you call to them as soon as you rode up, or your brother call to them?

A. Yes, sir; my brother did.

46. Had they left the door of the post-office when your brother called?

A. Just had come out.

47. Did both stop there?

A. Yes, sir.

48. You got down, both of you, and went in?

A. Yes, sir.

49. When you did, Mr. Amos Board went in with you, and you went in and left McClure standing outside?

A. Board went in.

130 50. You left McClure either standing on the doorstep or close beside the door?

A. Yes, sir.

51. When you came out where was McClure standing?

A. He was standing out there.

52. About the same place you left him?

A. I couldn't say whether it was the same place or not. He was standing right inside the door?

53. You didn't notice his position as you went in with sufficient particularity to say whether he was standing in the same place as you came out?

A. He was standing beside the door when we went in and when we came out.

54. Say this, a rough draft of the building (showing same)—this is the front door, there is the front room for persons receiving the mail, and the back room here with the office and boxes here in the gangway. Who went in first?

— Board.

55. It was dark.

A. He struck a match and stepped in.

56. Where did he go to light a lamp?

A. Lamp was sitting there on the table.

57. What table, this in the front room?

131 A. Yes, sir.

58. Are you certain he went there to light it?

A. Yes, sir.

59. Then he took it back and went back in there—carried the light with him?

A. No, sir; I don't know whether he took that one.

60. Do you remember of his lighting any other light?

A. He had a light back there.

61. Did he light any other lamp?

A. I don't know. There was one on that table.

62. You don't remember whether he lit another or not?

A. No, sir.

63. You do remember that nobody came in?

A. No, sir.

64. Why do you remember that?

A. I stood in the door.

65. Didn't stand in the door all the time, did you?

A. Yes, sir; I came in and turned right round.

66. Why do you remember that you stood in the door?

A. Well, I just remember it.

67. You don't remember whether there was a lamp in the front room and none in the back?

A. No, sir.

68. You didn't see any satchel?

A. No, sir.

69. You wasn't looking to see if anything would happen?

132 A. No, sir.

70. You did nothing to call your attention to how far you went into the room and turned back?

A. No, sir.

71. There was nothing to call your attention as to whether two lamps were lit?

A. No, sir.

72. How is it you cannot remember whether two lamps were lit and you can remember that that man who stood on the doorstep or by the door could not reach in the door and set that satchel by the door?

A. No, sir.

HERBERT BEARD, being duly sworn, testifies as follows:

Examined by Mr. WATHEN:

1. Where do you live?

A. In Hardinsburg.

2. What do you do there?

A. Well, I am teaching school now.

3. Are you a son of Taylor Beard?

A. Yes, sir.

4. Grandson of Tom Miller's there?

A. Yes, sir.

5. Are you any relation to Everette Jolly?

A. Yes, sir.

6. What?

A. Cousin.

133 7. Were you at Hardinsburg the night these stamps were said to have been taken?

A. Yes, sir.

8. Do you remember the occurrence?

A. Yes, sir.

9. Where were you that night, Mr. Beard?

A. I was up town.

10. Do you know Louis McClure?

A. Yes, sir.

11. Did you see him that night?

A. Yes, sir.

12. Where?

A. I saw — in Hop Pyle's; colored man—keeps a store.

13. Were you in there?

A. Yes, sir.

14. What time?

A. Between nine and ten o'clock.

15. Did he have anything with him?

A. He had a grip.

16. How was he carrying it?

A. It was sitting on the counter to his right.

17. How was he carrying it?

A. He wasn't carrying it.

18. Did he buy anything while you were in there?

A. Yes, sir.

19. What?

A. Some bananas.

134 20. Give any to anybody?

A. Gave me some.

21. Was he drunk or sober?

A. He was drunk.

22. What kind of a grip was that?

A. It was a brown grip about this long (measuring with his hands).

23. Did you notice whether it had a strap on it or not?

A. I couldn't say.

24. You say it was sitting on the counter by him?

A. Yes, sir.

25. How do you know it was McClure's grip?

A. It was the same grip I had seen Mr. McClure carry and he had hold of it.

26. Louis had hold of it?

A. Yes, sir.

27. Were you present when he bought these bananas?

A. Yes, sir; he bought one nickel's worth while I was there.

28. What did he say when he bought them; did you hear him make any remark?

A. I stepped in and he had just eaten a nickel's worth, and he said — eaten them all, but by God he had plenty of money to buy more, and he did buy some more.

Cross-examined by Mr. SMITH:

135 29. What size grip did you say that was? Indicate with your hands again as before.

A. I don't know as I could tell exactly the size; it looked like it might be about that long.

30. You were asked, first, in the examination-in-chief how he was carrying that grip, and you said he wasn't carrying it at all; that it was sitting on the counter by him; and afterwards asked how you knew it was his grip; you said because you had seen Mr. McClure with that grip before, and then you added, He had his hand on it.

A. Just lying on it right that way.

31. Are you right sure?

A. Yes, sir.

32. What called your attention to that; did he put his hand anywhere else that night about the store?

A. I guess he did; he never ate any bananas while I was in there.

33. How came you to notice that hand particularly?

A. I don't know; he started out the store when I came in and stepped in, and he said he knew me and I knew him and we had been together some.

34. He had started out the store when you stepped in?

136 A. Yes, sir.

35. Going out without the grip?

A. I don't know about that. He hadn't taken up the grip; it was still on the counter, and as I started in he just turned and faced me.

36. How far had he got?

A. Well, he was standing at the door. He would not have to take more than three steps.

37. How far had he started?

A. He hadn't started. He was standing, and I supposed he was starting. He turned and faced me as I came in.

38. Which hand was it?

A. Right hand.

39. On what part of the grip?

A. Top.

40. Did he have hold of the handle?

A. I could not say.

41. But you saw his hand there?

A. Right up there.

41. You are sure?

A. Yes, sir.

42. Where was his left hand?

A. I don't know where that was. He paid for the bananas.

43. Did he pay for the bananas with the left hand?

137 A. I don't know.

44. Do you remember anything about where his hands were that night?

A. I said his hand was on the grip—one of them.

45. Was there anything specially to call your attention to that?

A. No, sir.

46. You are a first cousin of Everette Jolly's?

A. Yes, sir.

47. His father and your mother are brother and sister?

A. No, sir; his father and my mother are brother and sister.

48. You live in that town?

A. Yes, sir.

Mr. WATHEN:

49. I don't know whether you know or not, but do you know whether Joe Ball is sick or well—have you heard?

A. I have heard Joe Ball is sick.

(Plaintiff objects to this questions and answer as not being competent.)

Which objection was sustained; — which the defendant at the time excepted.

This was all the evidence introduced by the defendant.

138 Thereupon the defendant moved the court to instruct the jury to find the defendant not guilty on counts Nos. 1, 2, & 5 in the indictment and on each of them; to which the district attorney objected. The court sustained the objection and refused to so instruct the jury; to which the defendant excepted at the time and still excepts.

The defendant moved the court to instruct the jury if they believe from the evidence that the stamps were taken from Louis McClure out on the streets, away from the post-office building, that they should find him not guilty under the indictment, which the court refused to give; to which the defendant excepted.

The defendant moved the court to instruct the jury that they could not convict under the second count of the indictment unless they believe from the evidence that he took the stamps from the actual possession of Thos. McClure; which the court refused to do; to which the defendant excepted.

Charge to the Jury.

GENTLEMEN OF THE JURY: I had better, perhaps, read these counts, so that you may have in your minds the exact charge.
(Reads the first count.)

139 The second count is substantially the same, except as to a slight difference as to the person.

(Reads the second count.)

(Reads the fifth count.)

This last count is really in effect a charge of receiving those stamps which were stolen by somebody else other than Jolly, and when received by him he knew them to be stolen. You will observe in this count the elements of the offense are, that some other person than the accused, Everette Jolly, has stolen these stamps, and that he has received them knowing them to be stolen. Therefore, if you believe from the evidence that this man has stolen them, why then this count of the indictment, the fifth count, is not made out, but is only in the event that you come to the conclusion from the evidence that some one else has stolen it, either McClure or somebody else has stolen these stamps, and that he has received these stamps thus stolen knowing them to be stolen.

Now, the two counts, first and second, allege in terms that he himself feloniously did steal, take, and carry away these stamps (the particular amount is not necessary for the Government to prove, or

140 the particular value of the stamps), but it is necessary for you to believe from the evidence, beyond a reasonable doubt, that he himself has stolen these stamps, and that he has stolen them as alleged here; that they were the personal property of the United States, and were stolen and carried away from the building used as a post-office building of the United States at Hardinsburg.

Under the second count you must believe that he has stolen these stamps thus described, or some of them, that they were personal property of the United States, and that they were then in the possession of Thos. McClure, who was a postmaster of the United States at the time—that is, that they were in his possession as postmaster of the United States. Now, in considering these counts of the indictment, you must assume that the accused is innocent until proven by competent evidence guilty. That presumption continues throughout from the beginning until the end of the case, and you must from the evidence believe, to the exclusion of reasonable doubt, that all the elements of the offense as charged have been proven.

Therefore, in considering the case (you have heard it all), —

141 you conclude that the accused is guilty of the offense charged in the first and second counts or either of them or both of them to the exclusion of reasonable doubt, then you should so find; if not, not.

So with the fifth count; but you should not find him guilty of the first and second and the fifth counts or the first or second and the fifth count. If you find him guilty—and you may find him guilty if you think the evidence justifies it—you may find him guilty of both the first and second, but you must not find him guilty of the first and second or first or second and fifth count, because in the evidence here one crime is inconsistent with the other. The first two counts are charging stealing by himself, and the other charging a stealing by somebody else and he receiving the stamps knowing they were stolen.

Now, gentlemen, take the case, consider it calmly, impartially, and say whether or not the Government has made out any of these charges. You should not, and I am sure you will not, be swayed in your judgment or influenced in the slightest degree by any

142 questions of sympathy either for the accused or for his family. All men on trial have the presumption of law of innocence, which I have just indicated to you, and all men stand equally before the law. If, after a fair, a careful, and impartial consideration of the evidence, you conclude there is a reasonable doubt of this man's guilt, you should then find him not guilty. If, on the contrary, you should find him guilty, to the exclusion of a reasonable doubt, then you should say so without regard to his interests, without regard to him, without regard to him family.

To all of said rulings of the court the defendant at the time excepted & still excepts; whereupon the jury retired to deliberate, and afterwards it returned in the court a verdict of "guilty" on first, second count- of the indictment; which said verdict reads as follows:

"We, the jury, find the defendant guilty as charged in the first and second count-.

J. B. HEAD, *Foreman.*"

Thereupon came the defendant, by his counsel, and before the rendition of judgment on said verdict, and moved the court

143 to arrest the judgment herein; which motion the court overruled & refused to arrest the judgment; to which defendant at the time excepted & still excepts.

Whereupon the defendant afterwards, on the 10th day of Feb'y, 1896, by leave of court filed his motion for a new trial; which motion was in the words and figures as follows, to wit:

United States District Court for the District of Kentucky, *set*:

UNITED STATES, Plaintiff,	} Motion and Grounds for New Trial.
<i>vs.</i>	
EVERETT JOLLY, Defendant.	

The defendant comes and moves the court to grant to him a new trial herein and to set aside the verdict herein, and for grounds says:

1st. The court erred to the prejudice of the defendant in not instructing the jury to find a verdict of "not guilty" for the defendant on each and every of the counts Nos. 1, 2, and 5 of the indictment.

2nd. The court erred to the prejudice of the defendant in permitting to be read to the jury these letters written by defendant and the letters written by others to him.

4th. The verdict is against the law.

144

R. A. MILLER,
CHAPEZE WATHEN,
Att'ys for Defendant.

Which motion was by the court overruled; to all of said rulings of the court the defendant at the time excepted, and tenders this as

his bill of exceptions and asks that this be signed and made part of the record, which is accordingly done, this 10th day of March, 1896.

JNO. W. BARR,

District Judge.

Endorsed: Filed March 10, '96. Thos. Speed, clerk.

Assignment of Errors.

The District Court of the United States for the District of Kentucky, *set* :

UNITED STATES, Plaintiff, }
vs.
 EVERETT JOLLY, Defendant. }

The defendant, Everett Jolly, filed this his assignment of errors committed at the trial of said cause:

1st. It was error for the court to overrule the demurrers filed by the defendant to counts Nos. 1, 2, and 5 in the indictment herein.

2nd. It was er-or to allow the Government to prove by the witness, W. J. Vickery, what purported to be a confession to said 145 Vickery, made to him by the defendant.

3. It was error to permit the district attorney to read as evidence to the jury letters or any part of letters or postal cards or any writings whatever purporting to have been written or received by the defendant.

4. It was er-or for the court to overrule the motion made to the court by the defendant to instruct the jury to find the defendant not guilty on counts Nos. 1, 2, and 5 of the indictment.

5. It was error for the court to charge the jury as follows:

"GENTLEMEN OF THE JURY: You had better, perhaps, read these counts, so that you may have in your minds the exact charge.

"The second count is substantially the same as the first, except as to a slight difference as to the person. Nor, the two counts, 1st and 2nd, allege in terms that he himself feloniously did steal, take, and carry away these stamps. The particular amount is not necessary for the Government to prove, or the particular value of the stamps; but it is necessary for you to believe from the evidence, beyond a reasonable doubt, that he himself has stolen these stamps;

146 that he has stolen them as alleged here; that they were the personal property of the United States, and were stolen and carried away from the building used as a post-office building of the United States at Hardinsburg.

"Under the second count you must believe that he has stolen these stamps thus stolen or some of them; that they were the personal property of the United States, and that they were then in the personal possession of Thos. McClure, who was the postmaster at the time—that is, that they were in his possession as postmaster of the United States."

6. It was error for the court to charge the jury as follows: "Therefore, in considering the case (you have heard it all) — you conclude that the accused is guilty of the offense charged in the first and second count- or either of them or both of them, to the exclusion of a reasonable doubt, you should so find; if not, not. So with the 5th count. But you should not find him guilty of the 1 and 2 and the 5th or the first or second and the fifth count if you find him guilty, and you may find him guilty if you think the evidence justifies. You may find him guilty of both the first and second, but you must not find him guilty of the first and second or the first or second and fifth count-, because in the evidence here one crime is inconsistent with the other."

147 7th. The court erred in charging the jury as follows: Now, gentlemen, take the case; consider it calmly, impartially, and say whether or not the Government has made out any of these charges. You should not, and I am sure you will not, be swayed in your judgment or influenced in the slightest degree by any interest or sympathy either for the accused or for his family. All men on trial have the presumption of law of innocence which I have just indicated to you and all men stand equally before the law. If, after a fair, careful, and impartial consideration of the evidence, you conclude there is a reasonable doubt of this man's guilt, you find him "not guilty." If, on the contrary, you should find him guilty to the exclusion of a reasonable doubt, you should say so without regard to his interest, without regard to him, without regard to his family.

8th. The court erred in not instructing the jury, on the motion of the defendant, that if they believe from the evidence that the defendant took the stamps from Louis McClure upon the streets of Hardinsburg, away from the post-office building, then he should be acquitted under the indictment.

148 9th. The court erred in refusing to instruct the jury, on motion of the defendant, that before they could convict the defendant under the second count of the indictment they must believe that the defendant took the stamps from the actual corporal possession of Thos. McClure.

12. The court erred in overruling the motion of the defendant to arrest the judgment herein.

EVERETT JOLLY,
By DAVID R. MURRAY,
R. A. MILLER,
CHAPEZE WATHEN,
Attorneys for Def't.

Endorsed on back: Filed March 10, 1896. Thos. Speed, clerk.

Poverty Affidavit.

The District Court of the United States for the District of Kentucky,
set :

UNITED STATES, Plaintiff, }
vs.
 EVERETT JOLLY, Defendant. }

I, Everett Jolly, the defendant in the above-stated cause, do solemnly swear that I am not possessed of sufficient means and am not worth \$10.00 above my wearing apparel, and am unable to secure the same to prosecute the appeal taken in said cause in the Supreme Court of the United States.

149 I therefore pray that it be prosecuted *in forma pauperis*.
 EVERETT JOLLY.

Subscribed and sworn to before me this 8th day of March, 1896.

ED. M. BELL,
U. S. Com'r.

Endorsed on back : Filed March 10, 1896. Thos. Speed, clerk.

Petition for Writ of Error.

The District Court of the United States for the District of Kentucky,
set :

UNITED STATES, Plaintiff, }
vs.
 EVERETT JOLLY, Defendant. }

To the clerk of the district court of the United States of the district of Kentucky:

Your petitioner, Everett Jolly, represents that at the January term, 1896, of the said court he was convicted on two counts of the indictment, in the first count of which he was charged with feloniously stealing, taking, and carrying away postage stamps from the building used as a post-office building of the United States at Hardinsburg, Breckinridge Co., State of Kentucky; and in the second count he was charged with stealing, taking, and carrying away postage stamps, personal property of the United States, from the possession of Thos. McClure, who was then postmaster at
 150 Hardinsburg, the State of Kentucky, and that the said court pronounced judgment and sentence of two years' confinement at hard labor in the State prison South at Jeffersonville, Ind., on the verdict of the jury aforesaid.

Your petitioner alleges that in the records and proceedings of the trial of said cause there is great and manifest error, to the prejudice and great damage to your petitioner.

He therefore prays that a writ of error from the Supreme Court of the United States be issued by you, under the seal of said district

court, in said cause, removing said cause and the record therein to the said Supreme Court, in order that the same may be there examined and if error be found that judgment and sentence against him therein may be reversed.

EVERETT JOLLY,
By DAVID R. MURRAY,
R. A. MILLER,
CHAPEZE WATHEN,
Attorneys for Defendant.

Endorsed on back: "Writ of error in the case herein mentioned is allowed, with supersedeas and stay of execution. Bail of the accused is fixed in the sum of \$5,000, with good security, this March 10, 1896. Jno. W. Barr, judge. Filed March 10, 1896. Thos. Speed, clerk."

151 UNITED STATES OF AMERICA, }
District of Kentucky, } ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the 18th day of April next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of Kentucky, wherein Everett Jolly is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Barr, judge of the district court of the United States, this 20th day of March, in the year of our Lord 1896, and of our Independence the 120th.

JNO. W. BARR,
Judge U. S. District Court, Kentucky District.

152 [Endorsed:] Citation. Everett Jolly vs. United States of America.

I hereby accept service of the within citation.
March 20th, 1896.

W. M. SMITH,
U. S. Att'y, District of Ky.

153 UNITED STATES OF AMERICA, }
District of Kentucky, } ss:

The President of the United States of America to the judge of the district court of the United States for the Kentucky district, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said district court, before

you, between The United States of America, plaintiffs, and Everett Jolly, defendant, a manifest error hath happened, to the great damage of the said Everett Jolly, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of the next October term in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable John W. Barr, judge of the district court of the United States, and the seal of said district court, at Louisville, in said district, this 20th day of March, A. D. 1896, and of the Independence of the United States the 120th.

THOS. SPEED,
C. D. C., K. D.

Allowed by—
JNO. W. BARR, *Judge.*

[Endorsed:] Writ of error. Everett Jolly *vs.* United States of America.

154 UNITED STATES OF AMERICA, }
District of Kentucky, Owensboro Division, } *set:*

I, Thomas Speed, clerk of the district court of the United States for the district of Kentucky, Owensborough division, hereby certify that the foregoing transcript is a true and complete copy of the record in the case of The United States *vs.* Everett Jolly, the original of which remains on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Owensboro, in said district, this 1 day of May, 1896.

THOS. SPEED, *Clerk,*
By ED. M. BELL, *Deputy.*

Fee for transcript, \$37.50.

Endorsed on cover: Case No. 16,388. Kentucky D. C. U. S. Term No., 238. Everett Jolly, plaintiff in error, *vs.* The United States. Filed September 28th, 1896.

e No. 238.

(Brief of Todd for P.E.)

Filed Dec. 13, 1897.

United States Supreme Court

OCTOBER TERM, 1897.

EVERETT JOLLY,

vs.

UNITED STATES.

Plaintiff in Error.

No. 238.

BRIEF FOR PLAINTIFF IN ERROR.

ROBERT S. TODD,

Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

EVERETT JOLLY,

PLAINTIFF IN ERROR. .

vs.

No. 238.

THE UNITED STATES.

Brief and Argument For Plaintiff in Error.

At the June term, 1895, of the District Court of the United States, for the District of Kentucky, at Owensborough, an indictment was returned against the plaintiff in error, containing five counts.

The plaintiff in error filed a demurrer to each count of the indictment, and the demurrer was sustained to the third and fourth counts. But the demurrer to the first, second and fifth counts was overruled, to which the plaintiff in error excepted. (Record, pp. 4 and 5.)

The plaintiff in error was found guilty as charged in the first and second counts, but the jury said nothing in their verdict as to the fifth count. (Record, p. 7.)

The counts under which the plaintiff in error was found guilty are as follows, to-wit :

“ First count. The grand jurors of the United States of America, impaneled and sworn and charged to inquire in and

for the district of Kentucky, on their oath present that Everett Jolly, late of the district aforesaid, on the 25th day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckenridge, State of Kentucky, and district aforesaid, did then and there feloniously steal, take and carry away from a building then and there used as a postoffice building of the United States of America, at Hardinsburg, in the county, State and district aforesaid, postage stamps of the United States of America amounting to one hundred and sixty-three and 12-100 dollars, said stamps being of the denomination—2,683 one cent, 2,400 two-cent, 191 four-cent, 183 five-cent, and 670 ten-cent stamps, 100 one-cent postage due stamps, and 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown, but that they were then and there of the value of one hundred and sixty-three and 12-100 dollars, lawful money of the United States of America, and were then and there the personal property of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5456."

"Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckenridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take and carry away postage stamps of the United States of America amounting to and of the value of one hundred and sixty-three and 12-100 dollars, lawful money of the United States of America, being of the denomination of 2,683 one-cent, 2,400 two-cent, 191 four cent, 183 five-cent and 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown; said stamps were then and there feloniously stolen, taken and carried away by the said Everett Jolly from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the postoffice at Hardinsburg, in Breckenridge county, State of Kentucky and

district aforesaid, and as such postmaster then and there had said stamps in his possession when so taken, and the said stamps so stolen, taken and carried away being then and there the personal property of the United States of America against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5456."

At the conclusion of the evidence, the plaintiff in error moved the court to instruct the jury to find the defendant not guilty as charged in first, second and fifth counts. The motion was overruled, to which the defendant excepted. (Record, p. 7.)

The plaintiff in error, before the rendition of judgment on the verdict, made a motion in arrest of judgment, but the court overruled the motion and refused to arrest the judgment, to which the plaintiff in error excepted. (Record, pp. 7 and 69.)

The plaintiff in error assigned the following as errors :

1. It was error for the court to overrule the demurrers filed by the defendant to counts Nos. 1, 2 and 5 in the indictment herein.

2. It was error to allow the Government to prove by the witness, W. J. Vickery, what purported to be a confession to said Vickery, made to him by the defendant.

3. It was error to permit the district attorney to read as evidence to the jury letters or any part of letters or postal cards or any writings whatever purporting to have been written or received by the defendant.

4. It was error for the court to overrule the motion made to the court by the defendant to instruct the jury to find the defendant not guilty on counts Nos. 1, 2, and 5 of the indictment.

5. It was error for the court to charge the jury as follows :

"Gentlemen of the Jury : You had better, perhaps, read these counts, so that you may have in your minds the exact charge."

The second count is substantially the same as the first, except as to a slight difference as to the person. Now, the two counts, first and second, allege in terms that he himself feloniously did steal, take, and carry away these stamps. The particular amount is not necessary for the government to prove, or the particular value of the stamps; but it is necessary for you to believe from the evidence, beyond a reasonable doubt, that he himself has stolen these stamps; that he has stolen them as alleged here; that they were the personal property of the United States, and were stolen and carried away from the building used as a postoffice building of the United States at Hardinsburg.

"Under the second count you must believe that he has stolen these stamps thus stolen or some of them; that they were the personal property of the United States, and that they were then in the personal possession of Thos. McClure, who was the postmaster at the time—that is, that they were in his possession as postmaster of the United States."

6. It was error for the court to charge the jury as follows:

"Therefore, in considering the case (you have heard it all)—you conclude that the accused is guilty of the offense charged in the first and second count—or either of them or both of them, to the exclusion of a reasonable doubt, you should so find; if not, not. So with the fifth count. But you should not find him guilty of the first and second and the fifth or of the first or second and fifth count if you find him guilty, and you may find him guilty if you think the evidence justifies. You may find him guilty of both the first and second, but you must not find him guilty of the first and second or of the first and second and fifth count, because in the evidence here one crime is inconsistent with the other."

7. The court erred in charging the jury as follows:

"Now, gentlemen, take the case; consider it calmly, impartially, and say whether or not the Government has made out

any of these charges. You should not, and I am sure you will not, be swayed in your judgment or influenced in the slightest degree by any interest or sympathy either for the accused or for his family. All men on trial have the presumption of law of innocence which I have just indicated to you, and all men stand equally before the law. If, after a fair, careful, and impartial consideration of the evidence, you conclude there is a reasonable doubt of this man's guilt, you find him 'not guilty.' If, on the contrary, you should find him guilty to the exclusion of a reasonable doubt, you should say so without regard to his interest, without regard to him, without regard to his family."

8. The court erred in not instructing the jury, on the motion of the defendant, that if they believe from the evidence that the defendant took the stamps from Louis McClure upon the streets of Hardinsburg, away from the postoffice building, then he should be acquitted under the indictment.

9. The court erred in refusing to instruct the jury on motion of the defendant, that before they could convict the defendant under the second count of the indictment they must believe that the defendant took the stamps from the actual corporal possession of Thomas McClure.

12. The court erred in overruling the motion of the defendant to arrest the judgment herein.

The first and second counts of the indictment are framed under the provisions of section 5456, of the United States Revised Statutes, which is as follows:

"Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment."

The offense committed by the defendant, according to the evidence before the jury, was the taking and carrying away from the postoffice at Hardinsburg, of certain postage stamps belonging to the United States.

ARGUMENT.

Our contention is that no indictment can be based on the provisions of section 5456, U. S. Revised Statutes, for the offense of taking and carrying away postage stamps belonging to the United States. That Congress has provided for the punishment of that offense by another section of the statutes, namely, section 5453, and that this is the only statute that applies to such offense. That postage stamps are not personal property of the United States, or things of value, but are merely representatives of value, and have been so declared by Congress by section 5413, U. S. Revised Statutes.

If we are right in this contention, the demurrers to the first and second counts (and the fifth count also) should have been sustained, or the court should have sustained the motions for a peremptory instruction to find for plaintiff in error or the motion in arrest of judgment.

The statute (sec. 5456) declares that every person who *robs* another of any kind or description of *personal property* belonging to the United States, or feloniously takes and carries away the same, shall be punished by fine and imprisonment.

Robbery is a common law offense and resort must be had to the common law for a definition of the offense. (In *Re. Greene*, 52 Fed. Repr. 111, Jackson, Judge; *U. S. vs. Armstrong* 2 Curt. 446; *U. S. vs. Coppersmith*, 4 Fed. Repr. 198).

It is defined as "the felonious and forcible taking away from the person of another of goods or money to any value, by violence and putting him in fear." 4 Black Com. 342; 2 East.

P. C. 707; Roscoe's Cr. Ev. 931; 2 Wharton's Cr. Law, Sec. 1695; U. S. vs. Reeves, 38 Fed. Reptr. 405, 406; U. S. vs. Wilson, Balwin 78.

And the words "feloniously takes and carries away the same" must (*noscitur a sociis*) be the felonious and forcible taking of personal property, belonging to the United States, from the person of another. (*United States vs. Jones*, 3 Wash. 216; *Desty's Am. Cr. Law*, sec. 142, a.). The property must be the subject of larceny. (*Rex. vs. Cannon*, Russ. & R. C. C. 146; *Reg. vs. Hemming*, 4 *Fost. & F.* 50).

The crime of robbery includes larceny as robbery is larceny committed by violence from the person of one put in fear.

In the criminal law the words personal property or personal goods or chattels, or words of like import, have never been held to include choses in action, such as notes, bonds, receipts, etc., or other representatives of value.

In *United States vs. Davis*, 5 *Mason*, 356-365, the defendant was indicted for stealing certain bank bills, a promissory note, etc., and one of the questions considered was whether under the Crimes Act of 1790, sec. 16, (1 *U. S. Stat. Large*, 112.) the words "personal goods" embraced choses in action.

Mr. Justice Story in the opinion says :

"Further, an indictment on the act of 1790 lies only where the offense is committed in respect to the personal goods of another. To ascertain what is the meaning of these words we must resort to the common law, for that furnishes the proper rule of interpretation. Now, in the strict sense of the common law, personal goods are goods which are movable, belonging to, or the property of, some person, and which have an intrinsic value. Bonds, bills and notes, which are choses in action, are not esteemed, by the common law, goods whereof larceny may be committed, being of no intrinsic value, and not importing any property in possession of the person from whom they are

stolen, but only evidence of property. See 2 Bl. Com. 383, 387, 394, 396, 397 ; 4 Bl. Com., 232-234 ; 2 East, Pl. Cr., 587 ; 2 Russell, Crimes, 1095 ; 1 Hawk. P. Cr. B. 1, ch. 33, secs. 34, 35. It is true that the words, 'goods' or 'chattels,' may, in the construction of wills, include bonds, notes, bank bills, etc.; but this is upon the presumed intention of the testator, where a liberal exposition of his words is allowable, and upon principles derived from the civil and canon law. 2 Roper on Legacies, ch. 16. But in penal statutes a more strict construction is adopted ; and the analogy of the common law in respect to larceny may well furnish the proper rule for decision. We think, then, that 'personal goods,' in the sense of the act of 1790, do not embrace choses in action. And the present indictment is, in part, founded on a larceny of choses in action."

See also :

- People vs. Cook, 2 Parker Cr. R. 12 ;
- Greeson vs. State, 5 Howard, (Miss.) 33 ;
- State vs. Cassados, 1 Nott & McC. 91 ;
- Payne vs. People, 6 Johnson 103 ;
- Colye's Case, 8 Coke 33 ;
- Rex vs. Morris, 1 Leach 468 ;
- 1 Hawkins' Pleas Cr. Ch. 32, Sec. 35 ;
- 2 Bishop's Crim. Law (6 Ed.) Secs. 782-787 ;
- People vs. Loomis, 4 Denio 380 ;
- Culp vs. State, 1 Port. (Ala.) 33 ;
- Reg. vs. Watts, 24 Eng. L. & E. 573 ;
- People vs. Bradley, 4 Park Cr. C. 245 ;
- People vs. Griffin, 38 How. Pr. 475 ;
- State vs. Hill, 1 Houst. Crim. C. (Del.) 420 ;
- Bishop on St. Crimes, Sec. 344.

A postage stamp is a representative of value. It is an obligation of the United States.

It is a receipt or obligation of the Government, which, when passes into the hands of a person, is evidence that he has

paid the tax or compensation the Government charges for transporting mail. Being a receipt or representative of value, in the hands of the United States, it is not a subject of larceny at the common law, and can be so only when it is so provided by statute.

Section 5413 of the U. S. R. S., is as follows :

"The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national (bank) currency, coupons, United States notes, Treasury notes, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representations of value, of whatever denomination, which have been or may (be) issued under any act of Congress."

The statute plainly declares that the words "obligations of the United States," includes "stamps" and that they are "*representatives of value.*"

And in sections 5467 and 5469 of the U. S. Rev. Stats., postage stamps are designated as obligations and securities of the government.

The laws of the United States do not, and it is supposed could not, provide a punishment for a larceny of postage stamps belonging to a person and not the property of the United States.

Congress has, as we believe and contend, expressly provided a punishment for a larceny, or taking and carrying away, of postage stamps, from a post office of the United States, or from any other place where they are kept or deposited by authority of the United States. And it is the only statute that does so provide and consequently the only law under the provisions of which an indictment can be found for that offense.

That statute is as follows :

"Sec. 5453. Every person who, without authority from the United States, secretes within, embezzles or takes and carries away from, any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bed piece, bed-plate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional-currency note, or other paper instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States, or who, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents, or who, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be punished by imprisonment, at hard labor, not more than ten years, or by a fine of not more than five thousand dollars, or both."

This section creates a statutory offense. It would not be necessary in an indictment under this section, for "embezzling" or "taking and carrying away," any of things mentioned, to allege that they were property of the United States.

If the indictment had charged that the plaintiff in error, at &c., on &c., "did, then and there, without authority from the

United States, take and carry away from an office, to-wit, an office then and there used and occupied as a post-office of the United States at Hardinsburg, in said county and district, where the same were kept by authority of the United States, certain obligations of the United States, towit: postage stamps of the United States, (describing them) which said postage stamps had been, and were then and there, wholly printed and stamped by the United States, and were intended to be issued and put in circulation on behalf of the United States, as obligations of the United States, against the peace and dignity of the United States and contrary to the form of the statute in such cases made and provided," it would have been good under section 5453.

But neither the first or second counts of the indictment under which the plaintiff in error was convicted are sufficient under the provisions of section 5453, because it is not alleged, first, that the postage stamps were taken "without authority of the United States;" second, that the postage stamps were "kept" or "deposited" in the post-office at Hardinsburg "by authority of the United States;" third, that the postage stamps were wholly "printed" or "stamped" by the United States; fourth, that the postage stamps alleged to have been taken were intended to be "issued or put in circulation on behalf of the United States as instruments or obligations of the United States;" and fifth, that the postage stamps were "obligations" of the United States.

It would be necessary, we respectfully submit, in framing an indictment under that section to allege each of the foregoing facts.

Offenses created by statute as well as offenses at the common law, usually consist of many ingredients, and the rule is universal that every ingredient of which the offense is composed must be accurately and clearly alleged in the indictment, or the

indictment will be bad on demurrer, or it may be quashed on motion, or the judgment may be arrested before sentence, or be reversed on a writ of error. *United States vs. Cook*, 17 Wallace 174; *United States vs. Reese*, 92 U. S. 225; *United States vs. Hess*, 124 U. S. 486.

The rule adopted by this court in the construction of criminal and penal statutes passed by Congress is, that they are to be construed strictly, not so strictly, indeed, as to defeat the clear intention of Congress, but the words employed must be understood in the sense they were obviously used.

In *United States vs. Wiltberger*, 5 Wheaton 95-96, Chief Justice Marshall uses the following language :

“The rule that penal laws are to be construed strictly, is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals ; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment.

“It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule, which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptance, or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning

of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases."

There was some contention in the court below, that although that statute (Sec. 5456) might not embrace the stealing of postage stamps, that the indictment was good under section one, chapter 144, 18 St. L. 479, 2nd Supp. R. S. p. 88. If our contention above made, is sound we submit that it applies with equal force to the section just referred to. To be convicted under that statute, one must be guilty of the larceny or embezzlement of money, property, record, voucher, or some valuable thing of the moneys, goods, chattels, records or property of the United States. A postage stamp is none of these. We take it that the words "or valuable thing whatever of the moneys, goods, chattels, records or property of the United States," are all limited to the meaning of the words given before, namely, "money, property, record, or voucher." But independent of that rule of construction, the words chattels or goods, when used in a penal statute, do not include choses in action, such as receipts or promissory notes, and therefore the indictment is not good under that statute.

We therefore respectfully submit to the court, that the court below erred in not sustaining the demurrer to the first, second and fifth counts; that it was also error to overrule the mo-

tion by plaintiff in error, to instruct the jury to find him not guilty on each of those counts and erred in not arresting the judgment. These rulings of the court are specifically assigned as errors.

As to the fifth count of the indictment, the verdict of the jury being silent as to it, was equivalent to a verdict of not guilty on that count. "A verdict of guilty on one count, saying nothing as to other counts, is equivalent to a verdict of not guilty as to such other counts, * * *." Wharton's Cr. Pldg. & Pract. sec. 740 and cases cited in the note, and Rapalje's Cr. Pro. sec. 134.

We respectfully pray a reversal.

ROBERT S. TODD,
Attorney for Plaintiff in Error.

AUTHORITY CITED.

United States Rev. Stats., Secs. 5413, 5453, 5456, 5467,
5469;

2 Supp. U. S. R. S. p. 88, Ch. 144 Sec. 1.

In Re. Greene, 52 Fed. Rep. 111;

U. S. vs. Armstrong, 2 Curt. 446;

U. S. vs. Coppersmith, 4 Fed. Rep. 198;

4 Blackstone's Com. 242;

U. S. vs. Jones, 3 Wash. 216;

Desty's Am. Cr. Law, Sec. 142, a;

Rex vs. Cannon, Russ. & R. C. C. 146;

Reg. vs. Hemming, 4 Fost. & F. 50;

U. S. vs. Davis, 5 Mason 356;

People vs. Cook, 2 Parker Cr. C. 12;

Greeson vs. State, 5 Howard (Miss.) 33;

State vs. Cassados, 1 Nott & McC. 91;

Payne vs. People, 6 John. 103;

Colye's Case, 8 Coke 33;

Rex vs. Morris, 1 Leach 468;

1 Hawkins Pleas Cr., Ch. 32 Sec. 35;

2 Bishop's Cr. Law, (6 Ed.) secs. 782-787;

People vs. Loomis, 4 Donie 380;

Culp vs. State, 1 Porter (Ala.) 33;

Reg. vs. Watts, 24 Eng. L. & E. 573;

People vs. Griffin, 38 How. Pr. 475.

People vs. Bradley, 4 Parker Cr. C. 245;

State vs. Hill, 1 Houst. Crim. C. (Del.) 420;

U. S. vs. Cook, 17 Wallace 174;

U. S. vs. Reese, 92 U. S. 225;

U. S. vs. Wiltberger, 5 Wheaton 95-96;

Wharton's Cr. Pldg. & Pract. sec. 740;

Rapalje's Cr. Pro. sec. 134.

N^o. 238.

MAR 25 1898
JAMES H. MCKENNEY,
CLERK.

Brief of Atty. Gen.^l (Boyd)
for U. S.

Filed Mar. 25, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

EVERETT JOLLY, PLAINTIFF	} No. 238.
in error,	
v.	
THE UNITED STATES.	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KENTUCKY.

BRIEF FOR THE UNITED STATES.

JAS. E. BOYD,
Assistant Attorney-General.

In the Supreme Court of the United States.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
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STATEMENT.

The plaintiff in error, Everett Jolly, was tried and convicted at the February term, 1896, of the district court for the district of Kentucky, and sentenced to imprisonment in the penitentiary for a term of two years.

The indictment in this case contained five counts and is as follows:

In the district court of the United States for the 6th circuit and district of Kentucky, Owensborough division.

Pleas and proceedings before the Honorable John W. Barr, judge of the district court of the United States for the district of Kentucky.

UNITED STATES	} Indictment.
<i>vs.</i>	
EVERETT JOLLY.	

Be it remembered that at a term of the district court of the United States for the district of Kentucky, Owensboro division, begun and held at the public building, in the city of Owensboro, for the regular June term, 1895, Hon. John W. Barr presiding, on the 4th day of June, 1895 (the second day of said term), the grand jury returned into court the following indictment, to wit:

UNITED STATES OF AMERICA,

District of Kentucky, set.:

In the district court of the United States for the sixth judicial circuit and district of Kentucky, held at Owensborough, Kentucky, June term, in the year of our Lord eighteen hundred and ninety-five.

First count.—The grand jurors of the United States of America, impaneled and sworn and charged to inquire in and for the district of Kentucky, on their oath present that Everett Jolly, late of the district aforesaid, on the 25 day of April, in the year of our Lord eighteen hundred and ninety-four,

in the district aforesaid, in the county of Breckinridge, State of Kentucky, and district aforesaid, did then and there feloniously steal, take, and carry away from a building then and there used as a post-office building of the United States of America, at Hardinsburg, in the county, State, and district aforesaid, postage stamps of the United States of America amounting to one hundred and sixty-three and 12/100 dollars, said stamps being of the denomination—2,683 one-cent, 2,400 two-cent, 191 four-cent, 183 five-cent, and 670 ten-cent stamps, 100 one-cent postage-due stamps, and 175 two-cent postage-due stamps; but a more particular description of said stamps is to the grand jurors unknown, but that they were then and there of the value of one hundred and sixty-three and 12/100 dollars, lawful money of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. See. 5456.

Second count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take, and carry away postage stamps of the United States of America amounting to and of the value of one hundred and sixty-three and 12/100 dollars, lawful money of the United States of America, being of the denomination of 2,683 one-cent, 2,400 two-cent, 191 four-cent, 183 five-cent, and 670 ten-cent stamps; 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is

to the grand jurors unknown; said stamps were then and there feloniously stolen, taken, and carried away by the said Everett Jolly from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the post-office at Hardinsburg, in Breckinridge County, State of Kentucky and district aforesaid, and as such postmaster then and there had said stamps in his possession when so taken, and the said stamps so stolen, taken, and carried away being then and there the personal property of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5456.

Third count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky, and district aforesaid, did then and there feloniously steal, take, and carry away from a building then and there used as a post-office building of the United States of America, at Hardinsburg, in the county, State, and district aforesaid, postage stamps of the United States of America amounting to one hundred and sixty-three and 12/100 dollars, said stamps being of the denomination of 2,683 one-cent, 2,400 two-cent, 191 four-cent, 183 five-cent, and 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps; but a more particular description of said stamps is to the grand jury unknown; which said stamps were then and there personal property of and belonging to the Post-Office Department of the United States of America, and were then and there of the value of one hundred and sixty-three and 12/100 dollars, lawful

money of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5476.

Fourth count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there feloniously steal, take, and carry away postage stamps of the United States of America, amounting to and of the value of one hundred and sixty-three and 12/100 dollars, lawful money of the United States of America, being of the denominations of 2,683 one-cent stamps, 2,400 two-cent stamps, 191 four-cent stamps, 183 five-cent stamps, 670 ten-cent stamps, 100 one-cent postage-due stamps, and 175 two-cent postage-due stamps, but a more particular description of the said stamps is to the grand jurors unknown; said stamps were then and there feloniously stolen, taken, and carried away by the said Everett Jolly from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the post-office at Hardinsburg, in Breckinridge County, State of Kentucky and district aforesaid; and as such postmaster then and there had said stamps in his possession when so stolen, taken, and carried away, and said stamps so stolen, taken, and carried away were then and there personal property of and belonging to the Post-Office Department of the United States of America, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. Sec. 5475.

Fifth count.—And the grand jurors aforesaid, upon their oaths aforesaid, do further present that Everett Jolly, late of the district aforesaid, on the twenty-fifth day of April, in the year of our Lord eighteen hundred and ninety-four, in the district aforesaid, in the county of Breckinridge, State of Kentucky and district aforesaid, did then and there have and retain in his possession, with the intent to convert to his own use and gain, postage stamps of the United States of America, belonging to the United States of America, amounting to one hundred and sixty-three and 12/100 dollars, said stamps being of the denominations of 2,683 one-cent stamps, 2,400 two-cent stamps, 191 four-cent stamps, 183 five-cent stamps, 670 ten-cent stamps, 100 one-cent postage-due stamps, 175 two-cent postage-due stamps, but a more particular description of said stamps is to the grand jurors unknown; said stamps being then and there of the value of one hundred and sixty-three and 12/100 dollars, lawful money of the United States of America, and which said stamps had been theretofore stolen from the United States of America by some other person to the grand jurors unknown; and the said Everett Jolly did then and there well know that the said stamps had been stolen as aforesaid, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

A demurrer was filed by Jolly's counsel as to the first, second, third, fourth, and fifth counts of the indictment and to each one of said counts, because the facts charged in said counts and each of them constitute no offense against the United States. (Rec., p. 4.) The demurrer was sustained by the court as to the third and fourth counts and overruled as to the first, second, and fifth counts

(Rec., p. 5), and the trial was had upon the first, second, and fifth counts of the indictment. The verdict of the jury was as follows (Rec., p. 7):

We, the jury, find the defendant guilty as charged in the first and second counts.

The draftsman of the indictment appears to have had in mind section 5456, Revised Statutes, and to have drafted counts one and two with reference to said section, which reads:

SEC. 5456. Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one year nor more than ten years, or by both such fine and imprisonment.

POINTS AND ARGUMENT.

There were several exceptions taken by the plaintiff in error during the progress of the case, the first being to the action of the court in overruling the demurrer to counts Nos. 1, 2, and 5 of the indictment, and assignment of error No. 1 is based upon this exception. Assignments of error Nos. 2 and 3 are based upon an exception to the admission of a confession made by Jolly to one Vickery, a post-office inspector, and the admission of certain letters found in Jolly's possession in connection with the said confession; but the plaintiff in error does not rely upon these in his argument, and I shall therefore not discuss them.

The remaining exceptions and assignments of error are all based upon the proposition that the court should have instructed the jury at the conclusion of the testimony to acquit the defendant. The court was asked by counsel for Jolly to so instruct the jury, the request being based upon the ground that the indictment being under section 5456 the evidence in the case tending to prove that Jolly committed a larceny of postage stamps from a post-office of the United States, or from the possession of a post-master of the United States, as such, did not authorize a conviction, the position taken by Jolly's counsel being, first, that in order to come within the scope and meaning of section 5456 there must have been an actual taking from the person—in other words, a robbery; and, in the second place, that postage stamps are not personal property of the United States within the meaning of that statute, or, as stated by counsel in opening the argument in his brief, "that no indictment can be based on the provisions of section 5456, United States Revised Statutes, for the offense of taking and carrying away postage stamps belonging to the United States; that Congress has provided for the punishment of that offense by another section of the Statutes, namely, section 5453, and that this is the only statute that applies to such offense; that postage stamps are not personal property of the United States, or things of value, but are merely representatives of value, and have been so declared by Congress by section 5413, United States Revised Statutes."

The demurrer, which was overruled as to counts one, two, and five of the indictment, was based upon the same ground, as is disclosed by the brief of the plaintiff in error.

The plaintiff in error confines the argument in his brief to the points above suggested, namely, his exception to the action of the court in overruling the demurrer to the counts in the indictment on which the trial and conviction were had, and to the refusal of the court at the close of the testimony to instruct the jury to find the defendant not guilty, as requested.

The first question for consideration, then, is as to the scope and meaning of section 5456, Revised Statutes, and whether the contention that a proper construction of the said section confines it to the taking of personal property from the person, and not otherwise. As before stated, the section reads:

Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished, etc.

The construction placed upon this statute in the brief of the plaintiff in error can not be the true one. Certainly the intention of Congress was not only to punish the unlawful taking of the personal property of the United States from the person of one who had it in possession, but was also to punish the felonious taking and carrying away of such property from the lawful custody of the United States or its agents. If this was not the intention of section 5456, what was the necessity for the alternative clause? When the statute says "Every person who robs another of any kind or description of personal property belonging to the United States," it denounces the felonious taking and carrying away of the property from the person, because robbery is from the

person, and this is a separate and distinct offense under the first clause of the statute. The second clause would then read as follows (omitting the intermediate words which describe the offense under the first clause):

Every person who feloniously takes and carries away the same.

What does the word "same" refer to? Certainly to "*any kind or description of personal property belonging to the United States.*" Then, to complete the statute as it was undoubtedly intended to be construed by Congress, the language of the second clause would be as follows:

Every person who feloniously takes and carries away any kind or description of personal property belonging to the United States shall be punished, etc.

It seems clear, therefore, that the first position of plaintiff in error, that the section under discussion only applies to robbery, can not be maintained.

The next position contended for by the counsel for plaintiff in error in his brief is—

That postage stamps are not personal property of the United States or things of value, but are merely representatives of value, and have been so declared by Congress by section 5413, United States Revised Statutes.

The argument of the counsel is that, in order to bring the offense within section 5456, the essential principles pertaining to larceny at common law must be applied, at least in so far as the article alleged to have been taken is concerned, and upon this ground it is insisted that postage stamps in the custody of the United States or its

agents, before actually sold, are not the subject of larceny. Larceny at common law is defined by Mr. Blackstone as "the felonious taking and carrying away of the personal goods of another," and he says, further, "this felonious taking and carrying away must be of the personal goods of another, for if they are things real, or savor of realty, larceny at common law can not be committed of them." Further, by the same commentator, that "bonds, bills, and notes, which concern mere choses in action, were also at the common law held not to be such goods whereof larceny might be committed, being of no intrinsic value and not importing any property in possession of the person from whom they are taken, but such were made the subject of larceny by statute." (2 Geo. II, chap. 25.)

The point intended to be made here, however, is that Congress, in the statute under consideration, did not intend to restrict the offense within the technical limits of larceny at common law—that is, by what is understood by the term "personal goods or chattels"—but intended to give the statute a much broader scope and to include within its operations, "*personal property of any kind or description belonging to the United States.*" Bank notes, bonds, bills, certificates, representatives of value, etc., are held not to be goods and chattels, but it is nowhere held that such are not personal property in the general signification of the term, and, while it was not larceny at common law to steal bank notes (unissued), bonds, bills, obligations, representatives of value, etc., so charged in a bill of indictment for larceny, it has been decided that an indictment for larceny, even as to these, can be

sustained for stealing the paper on which they are printed, stamped, or written. (1 Wharton's Crim. Law, § 880, p. 769.)

I take the position that stamps deposited in a post-office of the United States for sale and use, or in the possession of a postmaster of the United States for sale and use under the postal laws of the United States, are the subject of larceny at common law. They have been issued by the Government, but have not been sold. They have an intrinsic value to the Government—at least to the extent of the cost, for the materials used in their construction, namely, the paper, the mucilage, and the coloring used in the stamping; all have a recognized market value—and it does not enter into the consideration of the question whether the intrinsic value of the articles stolen is great or small. The same doctrines apply. "To be a subject of larceny, in all cases, the property taken must be of some value, though proof of the slightest degree of usefulness will satisfy this requirement." (A. & E. Encycl. of Law, vol. 12, p. 786; *Wolverton v. Com.*, 75 Va., 909.)

"It as essentially violates a rule necessary to the good order of society to steal a thing of small value as of great, though the crime is not deemed so heavy. Therefore an indictment may be maintained if the thing is of *some worth*, though less than the smallest coin or denomination of money known to the law." (1 Bishop's New Crim. Law, § 224, p. 123, and cases there cited.)

But, as before stated, section 5456 does not restrict the offense described in the said section to technical larceny

at common law, namely, the felonious taking and carrying away of the personal goods and chattels of the United States, but it uses the broad and comprehensive terms, "*any kind or description of personal property.*" Property is *nomen generalissimum*, and "in its appropriate sense means that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects. Standing alone, the term includes everything that is the subject of ownership." (Anderson's Diet. of Law; A. and E. Encycl. of Law, vol. 19, pp. 284, 285.) "Property" includes not only ownership, estates, and interests in corporeal things, but also rights, such as trademarks, copyrights, patents, and rights *in personam* capable of transfer or transmission, such as debts. (See *Birchall v. Pugin*, L. R., 10 C. P., 397; 2 Aust. Juris., 817 *et seq.*) "Property," in a policy of insurance, has been held to include current bank bills owned by the assured. (5 Metcalf Rep., 1.) The term "goods and chattels" includes choses in action. (1 Atk., 182.) The word "property" includes choses in action as well as choses in possession. It includes money due as well as money possessed. (*Carlton v. Carlton*, 72 Me., 116; *Idc v. Hurwood*, 30 Minn., 195.) In *Lilly v. Commissioners*, 69 N. C., 307, it is held that, "A *credit* is property, and, as such, is liable to taxation as any other property." In *Adams v. Jones*, 6 Jones's Eq. (N. C.), 221, it is held that a share of stock in a railroad company is property to be sold under a clause of a will. The word "property" is among the most comprehensive among those in use to signify things which are owned and enjoyed. (*Redmond v. Commissioners*, 106 N. C., 140.)

"Property," in its legal sense, is the exclusive right of possessing, enjoying, and disposing of a thing. (*Chicago, etc., R. Co. v. Englewood, etc., R. Co.*, 115 Ill., 375-385.) Postage stamps belonging to the Government come under the general head of personal property, because the Government has the exclusive right of possessing, enjoying, and disposing of them, and this is true without regard to their intrinsic value.

The term "personal property" includes goods and chattels, but goods and chattels do not include all kinds and descriptions of personal property; so, in this statute, the words "any kind or description of personal property" are sufficiently broad to embrace every article of personalty which can be included under the head of property.

The attention of the court is called particularly to the fact that these postage stamps, charged in the bills to have been taken by Jolly, had been issued by the Government to the postmaster at Hardinsburg, Ky., but were not sold. As to the value of the postage stamps under these conditions, attention is called to the act of July 17, 1862 (12 Stat. L., 592), in which postage stamps are made receivable in payment of dues in sums of less than \$5. Attention is also called to the act of June 12, 1866 (14 Stat. L., p. 60, sec. 12), in which the item of expense in the manufacture of stamps is recognized. The fact that postage stamps are made the subject of an offense in section 5453 shows that they are recognized as property by the United States, at any rate by the legislative branch of the Government.

I therefore differ with the counsel in the position that *postage stamps are not personal property of the United States*. As mere representatives of value, if such they are, and therefore of no intrinsic value, they may not be the subjects of larceny at common law; but most certainly they are property, because they are the subject of ownership and they are personal property as contradistinguished from realty. I maintain that postage stamps are property, that they are personal property, and, while belonging to the United States after they are manufactured and prepared and before sold, come within the meaning and purport of section 5456. In *United States v. Davis*, (5 Mason, 356-365), cited by and relied on by plaintiff in error, Justice Story does not hold that choses in action are not personal property. He says that "Bonds, bills and notes which are choses in action *are not esteemed by the common law goods whereof larceny may be committed*, being of no intrinsic value," etc. This is in line with the position that although choses in action or representatives of value are not included in the term "goods," and as such the subject of larceny at common law, yet they are personal property.

But the plaintiff in error insists that the bill of indictment should have been drafted under section 5453, which reads as follows:

Every person who, without authority from the United States, secretes within, embezzles, or takes and carries away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any

bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional-currency note, or other paper instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States, or who, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents, or who, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be punished by imprisonment, at hard labor, not more than ten years, or by a fine of not more than five thousand dollars, or both.

Suppose, for the sake of the argument, that the court should hold that postage stamps are not personal property such as contemplated in section 5456. I submit that the two counts of the indictment upon which Jolly was convicted contain sufficient allegations to constitute an offense under section 5453. It is true, as before stated,

that the draftsman of the bill under consideration seemed to have in mind section 5456 when he drafted the first and second counts of the indictment upon which the plaintiff in error was convicted, for, after he concluded each one of these counts, he noted this section. But it is decided in *Williams v. United States*, at this term (168 U. S., 382), that "When an indictment properly charges an offense under the laws of the United States, that is sufficient to sustain it, although the prosecuting representative of the United States may have supposed that the offense charged was covered by a different statute."

It is not necessary to use the exact words of a statute in order to sufficiently charge a statutory crime. The requirements are that the indictment shall state the offense with sufficient certainty, first, to enable the court to see that, if the facts are true, an offense has been committed; second, to enable the court to know what punishment to impose in case of a conviction; third, to enable the court to confine the proof to the offense charged; fourth, to give the defendant reasonable notice of the particular charge which he is called upon to answer, so that the record will show the offense with which the defendant is charged; fifth, to so identify the offense that an acquittal or conviction may be pleaded in bar of a subsequent prosecution for the same offense. (Clark's *Crim. Proc.*, 150; Bishop's *Crim. Proc.*, § 519 *et seq.*; 1 Stark. *Crim. Pl.*, 68.)

Now, let us apply these rules and see if this indictment is not sufficient even under section 5453. For convenience, let us eliminate all of section 5453 except

that which relates to the particular offense with which Jolly is charged. The statute would read this way :

Every person who, without authority from the United States, * * * takes and carries away from any building, room, office, * * * or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any * * * postage stamp * * * now or hereafter authorized by law to be printed, stamped, * * * on behalf of the United States, * * * shall be punished by imprisonment at hard labor not more than ten years or by a fine of not more than five thousand dollars, or both.

Now, this bill alleges that Jolly "did feloniously steal, take, and carry away." This allegation is sufficient to charge that it was done without the authority of the United States, for when it is alleged that the taking and carrying away was felonious and by stealth this language implies the absence of authority from the United States to take and carry away the stamps. One material element of larceny is that the property stolen is taken without the consent of the owner, but no bill of indictment charges in so many words that the property is taken without the consent of the owner or the authority of the owner. When a person is charged with the stealing, that sufficiently alleges that the consent of the owner is wanting. Then the taking by Jolly of the postage stamps described in the bill without the authority of the United States is sufficiently charged when the bill alleges that he "did feloniously steal, take, and carry away." This certainly negatives the taking "by authority."

It is further necessary to charge under this section that the taking and carrying away was from a building, room, office, etc., where stamps were kept, used, employed, placed, lodged, or deposited by authority of the United States.

The charge in this indictment, in the first count, is that the stamps were taken from a building used as a post-office building of the United States of America, at Hardinsburg, etc., and, in the second count, that they were taken from the possession of Thomas McClure, who was then and there a postmaster of the United States of America of the post-office at Hardinsburg, etc., and, as such postmaster, then and there had said stamps in his possession when so taken. What more is necessary to state the charge that the stamps were taken from a building, office, or place where they were kept., etc., by authority of the United States? The post-office of the United States is established by law and is by law an office or a place where postage stamps belonging to the United States, before they are issued for actual use to pay postage on mailable matter, are kept. Section 3918, Revised Statutes, is as follows:

Postage stamps and stamped envelopes shall be furnished by the Postmaster-General to all postmasters, and shall be kept for sale at all post-offices; and each postmaster shall be held accountable for all such stamps and envelopes furnished to him.

Not only is the post-office thus constituted a legal repository for postage stamps belonging to the United States, but the postmaster is made a legal custodian of

such stamps. Therefore, when the allegation is contained in the indictment that the stamps stolen by Jolly were taken from a post-office of the United States and from the possession of the postmaster, it sufficiently charges that they were taken from a place, building, office, etc., where they were kept, used, employed, placed, lodged, or deposited by authority of the United States.

The articles alleged to have been feloniously taken and carried away by Everett Jolly were postage stamps of the United States of America amounting to the value of \$163.12, which are particularly described in the bill of indictment as being of the denomination of 2,683 1-cent, 240 2-cent, 191 4-cent, 183 5-cent, 670 10-cent, 100 1-cent postage-due stamps, 175 2-cent postage-due stamps—the same description being given in both the first and second counts. Therefore, here are the three essential elements of the statutory offense under section 5453: First, that the taking was without the authority of the United States, because it was felonious and by stealth; second, that the taking was from a building and from the possession of the postmaster where the stamps were kept, used, employed, lodged, and deposited by authority of the United States; third, the stamps taken are specifically described as postage stamps of the United States of various denominations. These allegations were sufficient to give the court to understand that an offense had been committed. In case of conviction there could be no question in the mind of the court as to the punishment authorized by law. The court could readily confine the evidence in the case to the offense

charged. The defendant was put fully upon notice, not in general terms, but with great particularity, as to the charge against him, and the production of the record in this case would be a complete bar to a subsequent prosecution founded upon the same acts.

JAS. E. BOYD,

Assistant Attorney-General.

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OPINION

JOLLY *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF KENTUCKY.

No. 238. Submitted April 28, 1898. — Decided May 9, 1898.

Postage stamps belonging to the United States are personal property, within the meaning of Rev. Stat. § 5456, which enacts that "Every person who robs another of any kind or description of personal property belong-

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ing to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one year nor more than ten years, or by both such fine and imprisonment," and may be made the subject of larceny.

THE case is stated in the opinion.

Mr. Robert S. Todd for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

MR. JUSTICE PECKHAM delivered the opinion of the court.

The plaintiff in error seeks to reverse his conviction of the crime of stealing certain postage stamps on the 25th day of April, 1894, being the property of the United States, upon which conviction he was sentenced to be imprisoned for the term of two years. The indictment against him was found in the District Court of the United States for the District of Kentucky, Owensborough Division, in the June term, 1895, and contained five counts. It was drawn under section 5456 of the Revised Statutes. The first count alleged, in substance, that on the 25th day of April, 1894, at Hardinsburg, in the district mentioned, the defendant did feloniously steal, take and carry away from a building then and there used as a post office building by the United States, certain postage stamps of the United States, of various denominations mentioned in the indictment, and of the value named (\$163.12), and which stamps were then and there the personal property of the United States of America.

The second count was the same, except that it alleged the stealing to have been from the possession of Thomas McClure, the postmaster, etc.

The third and fourth counts alleged the stamps to have been the property of the Post Office Department, and the fifth count alleged that he had the stamps in his possession with intent to convert to his own use, the same having there-

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tofore been stolen from the United States by some other person, which the defendant well knew.

Upon being arraigned, the defendant filed a demurrer to each count of the indictment, which was sustained as to the third and fourth counts and overruled as to the others.

His counsel upon the trial again raised the question as to the validity of the first and second counts, duly excepting to the decision of the court in holding that he might be convicted upon either of them.

The judge charged the jury that the defendant could not be convicted under the first, second and fifth counts together; that if convicted upon either the first or second count, or both, he could not be convicted under the fifth.

He was found guilty as charged in the first and second counts, but the jury said nothing in their verdict as to the fifth count.

The same objections to the conviction that were taken below are now urged upon us by counsel for the plaintiff in error as grounds for the reversal of the judgment.

Section 5456 of the Revised Statutes, under which the indictment was drawn, reads as follows:

"Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment."

The contention on the part of the plaintiff in error is, that in order to sustain an indictment under this statute (1) there must be a felonious and forcible taking of personal property; and (2) the property must be the subject of larceny, which postage stamps belonging to the Government are not.

(1) There are two distinct offences mentioned in the statute.

One is the offence of robbery, the legal and technical meaning of which is well known. It is a forcible taking, or a taking by putting the individual robbed, in fear.

There is also set forth in the statute the crime of feloniously taking and carrying away any kind or description of personal

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property belonging to the United States. This is a distinct and separate offence from that of robbery. If the statute required the taking to be forcible in all cases, the language providing against the felonious taking and carrying away of the personal property of the United States would be surplusage, the forcible taking being already implied and included in the use of the word "rob." But in addition to robbery, the offence of feloniously (not forcibly) taking the personal property of the United States is created. The indictment herein comes under the latter head.

(2) The objection that the postage stamps are not the subject of larceny while in the possession and being the property of the United States, we think is also untenable.

The language used in the statute is much broader and covers more ground than the common law definition of larceny, and is also more comprehensive than the statute of 1790. Act of April 30, 1790, c. 9, 1 Stat. 112, 116. "Any kind or description of personal property" is an exceedingly broad designation. It is difficult to imagine language which would be plainer in its meaning, or which would more certainly embrace property such as is the subject of this indictment.

Postage stamps while in the hands of the Government, ready to be sold and used, are most surely its personal property. Although section 5413 provides that the words "obligation or other security of the United States" shall be held to mean, among other things, "stamps and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress," yet that language does not preclude the stamps from being the personal property of the United States before they are issued and sold by it. The section in question (5413) precedes those sections relating to the forgery or counterfeiting of United States obligations or securities, national bank notes, letters-patent, certificates of entry, public records and the like, and it includes stamps or any obligation of the United States that may be the subject of forgery or counterfeiting, but it does not thereby exclude postage stamps, before they are issued and while in the possession of the Government, from the

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general designation of personal property belonging to the United States.

There is, while the stamps are in the possession of the Government, some intrinsic value in the stamps themselves as representatives of a certain amount of cost of material and labor, both of which have entered into the article in the process of manufacture entirely aside from any prospective value as stamps. They are incapable of being distinguished, the one from the other. All postage stamps of the same denomination are alike, and the moment they are taken from the possession of the Government they are valuable in proportion to their denomination and are subject to use, the same as if they had been purchased, because it is wholly impossible for the Government to detect or identify any particular stamp as having been stolen or otherwise fraudulently put in use. Once out of the possession of the Government they may be used for their full value to obtain carriage by mail of the article to which they are affixed. There is every reason therefore why such stamps should be regarded as personal property even while in the possession of the Government. They become valuable to the amount of their denomination the very instant they get into the possession of another. They are not mere obligations, but a species of valuable property in and of themselves the moment they are out of the possession of the Government.

The case of the *United States v. Davis*, 5 Mason, 356, 362, 365, was an indictment for stealing bank bills, a promissory note, etc., and it was founded upon a different statute in which very different language was used. The act under which that indictment was found was chapter 9 of the laws of 1790, (1 Stat. 112, 116,) and section 16 thereof provided "that if any person . . . shall take and carry away, with intent to steal or purloin, the personal goods of another," etc. It was held by Mr. Justice Story that the meaning of the words "personal goods of another" was to be determined by a resort to the common law as furnishing the proper rule of interpretation, and he held that in the strict sense of the common law "personal goods" are goods which are movable, belong to, or are the

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property of some person, and which have an intrinsic value ; that bonds, bills and notes, which are choses in action, are not esteemed by common law goods whereof larceny may be committed, being of no intrinsic value, and not importing any property in the possession of the person from whom they are stolen, but only evidence of property. Therefore, strictly construing the statute as a penal one, the court held that the analogy of the common law in respect to larceny might well furnish the proper rule for decision, and that personal goods in the sense of the act under consideration did not embrace choses in action. Since that statute was passed the common law definition of larceny has been largely extended by statute in almost every State in the Union.

The statute from which section 5456, Revised Statutes, was taken was passed March 2, 1867, c. 193, 14 Stat. 557, and the same all-embracing language is found therein. "Any kind or description of personal property" is the phrase used. It was no doubt passed to enlarge the common law in relation to the subjects of larceny. Although at common law written instruments of any description were not the subject of larceny, as not being personal goods ; that is, movables having an intrinsic value, yet although such instruments could not in strictness be stolen, the paper or parchment on which they were written might be, and prosecutions for petty thefts of this description frequently took place in England. *People v. Loomis*, 4 Denio, 380 ; 3 Chit. C. L. 932 ; 2 Russ. on Crimes, 74 to 80 ; *Rex v. Clark*, R. & R. 181 ; *Vyse's case*, Ry. & Mood. 218 ; *Reg. v. Morris*, 9 C. & P. 347 ; *Reg. v. Rodway*, 9 C. & P. 784 ; *Rex v. Bingley*, 5 Id. 602 ; *Rex v. Mead*, 4 Id. 535. To make stamps, while unissued and in the hands of the Government, the subject of larceny is not, therefore, any very great departure from the general doctrine of the common law.

Counsel for plaintiff in error claims that the offence, as shown by the evidence in this case, assuming it to be true on the part of the United States, is brought within section 5453 of the Revised Statutes in relation to secreting, embezzling, taking or carrying away any property, etc., stamped in whole or in part, and intended to be issued in behalf of the United

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States, and he also argues that the indictment is wholly defective under that section.

Whether the facts might or might not warrant an indictment under such section, it is not now necessary to decide, for the reason that we hold the indictment good under section 5456, because we regard postage stamps belonging to the United States as being included in the section in question as personal property, and therefore the subject of larceny.

The action of the jury in returning a verdict of guilty upon the first and second counts and being silent as to the fifth was equivalent to a verdict of not guilty as to that count. See cases cited by Mr. Justice White in *Selvester v. United States*, 170 U. S. 262.

For the reasons already given, we think the judgment is right, and that it should be

Affirmed.
